

# **CORRECTIONAL REFERENCE GUIDE AND FINAL REPORT**

A Report of the  
Correctional Standards and Oversight Committee  
to the 56th Legislature and the Governor

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## CHAPTER 1

### COMMITTEE WORK

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#### Enabling Legislation and Authority

The Correctional Standards and Oversight Committee (Committee) was authorized by the Legislative Council as an interim study committee on corrections as an issue of statewide importance under Title 5, chapter 5, part 2, MCA. The Legislative Council also assigned House Joint Resolution No. 19, a study on correctional facility standards, to the Committee (see Appendix A).

#### Overview of Meetings

The Committee held 11 meetings: Helena (June 27 and July 25, 1997, and January 23, May 1, June 19, August 20 and 21, 1998), Deer Lodge (October 2 and 3, 1998), Billings (November 7, 1997), Boulder (January 22, 1998), Great Falls (March 6, 1998), and Bozeman (September 12, 1998).

In addition, the Committee held a conference call on October 17, 1997, regarding the proposal for a Southwest Montana Multijurisdictional Detention Center.

#### Tours

- , Montana State Prison, Deer Lodge (October 2, 1997)
- , Treasure State Correctional Treatment Center (Boot Camp), Deer Lodge (October 2, 1997)
- , Montana Women's Prison, Billings (November 7, 1997)
- , Riverside Youth Correctional Facility, Boulder (January 21, 1998)
- , Great Falls Prerelease Center (March 6, 1998)
- , Cascade County Regional Correctional Facility, Great Falls (March 6, 1998)
- , Representative Wyatt, Senator Christiaens, and Representative McGee in September 1997 toured the Hardeman County, Tennessee facility that is housing Montana adult male inmates.
- , Representative Gillan, on behalf of the MWP Advisory Committee and

Senator Sprague, on behalf of the Committee, in July 1998, toured the Gallup, New Mexico women's facility that is housing Montana adult female inmates.

### Conferences

- , Alcohol and Drug Abuse (October 28 and 29), Livingston
- , Judges Conference, May 18, 1998, in Whitefish (Letter, Exhibit #11, March 6, 1998) and October 6, 1998, in Red Lodge.
- , Butte Cares, Butte, January 1998.
- , National Institute of Justice, Representative McGee and Senator Christiaens
- , RECLAIM Ohio
- , Burton K. Wheeler Center, Future of Corrections, September 11 and 12, 1998 in Bozeman

### Subcommittees

The Committee divided itself into four subcommittees to enable them to study certain aspects of the correctional system more closely.

The Juvenile Issues Subcommittee's study topics included coordination with Montana Board of Crime Control grant proposals and the Department of Corrections' (Department) pilot project, juvenile detention standards, administration of juvenile corrections, and juvenile private contracts and funding. The membership was composed of Representative Ernest Bergsagel and Representative Diana Wyatt.

The Jail Standards Subcommittee's study topics included coordination with Montana Sheriffs and Peace Officers update and revision of existing county jail standards and standards for regional correctional facilities. The membership was composed of Representative Red Menahan and Senator Bea McCarthy.

The Planning and Projections Subcommittee's study topics included coordination with the Department to develop common, user-friendly terminology for the budget process, to develop a proactive plan for the development of population projection numbers for the future demand for correctional services, to monitor the

development of the case management system for juvenile corrections, to monitor improvements to the Adult Correctional Information System, and to monitor progress of the Department budget throughout the biennium. The membership was composed of Senator Arnie Mohl and Representative Red Menahan.

The Private Prisons and Programs, Victims, and Restitution Subcommittee's study topics included monitoring and addressing issues with private contracts, prisons, and other programs, such as the Dickens County facility in Spur, Texas, and researching issues relating to victims and restitution, sentencing and parole functions, including the effects of elimination of good time, treatment, and special populations, monitoring progress of several Department requests for proposals, and reviewing correctional standards for state prison and private facilities. The membership was composed of Representative Dan McGee and Senator Chris Christiaens.

Many of the topics transcended more than one subcommittee, and all topics were brought forward to the full Committee in some fashion. The report is organized along these four subtopic areas although the topics were discussed in more than one subcommittee and in the full Committee.

## **Resources**

House Joint Resolution No. 19 required that the final report submit a complete set of minimum standards. The complete set of minimum standards for adult detention centers will be in the Legislative Library as well as numerous other resources on correctional standards. In Chapter 4, "Resources", there is a bibliography of the materials specifically related to correctional standards. Other resources include a listing of all of the staff reports of the Legislative Services Division staff, resources from the Legislative Audit Division staff, and documents that may be of interest submitted by the Department, the Board of Pardons and Parole, and the Governor's Office of Budget and Program Planning. In addition, there will be a Legislative Folder of Correctional Materials placed in the Legislative Library that will contain copies of Department information on Native American statistics, a Correctional glossary, the Legislative Budget Document and cost per day information, and other information that distills the volumes of information available.

In addition, staff from the Legislative Services, Audit, and Fiscal Divisions have worked in a team effort to support the Committee throughout interim and can provide information and analysis.

## **CHAPTER 2**

### **COMMITTEE FINDINGS AND RECOMMENDATIONS AND DEPARTMENT RESPONSE**

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The Committee approved the following findings and recommendations at their final interim meeting on September 12, 1998. The Committee took action on these recommendations on a conceptual basis, as a fiscal analysis had not been completed, and there may be a fiscal impact to some of the following recommendations. Based on any fiscal impact, the Committee will reserve its option to amend its recommendation. The Department provided its response to the findings and recommendations in October. Background for each of the recommendations is included in Chapter 3.

#### **Issues Raised Before the Full Committee**

##### A. Prison Population Projections

1. **FINDING:** The Committee finds that although the Legislative Audit Division has reviewed the Department's methodology for projecting prison populations and found it sound, the limitations within the projection methodology are problematic for planning and budgeting purposes.

**RECOMMENDATION:** The Committee recommends that the Department improve its database and review its methodology as provided in the Legislative Audit Division report. Any revision to the methodology must take into account the multiple variables that influence prison populations (i.e., statutory changes, percentage of sentence served, crime rate, etc.) in addition to admissions and length of stay and be more sensitive to changes in those variables.

DEPARTMENT RESPONSE: On the advice of the National Institute of Corrections, the Department has engaged Jack Leonard from California who manages the most complex projection model in the country. Mr. Leonard has already overviewed our system and met with representatives from each government entity that impacts the correctional system population, including Representative Dan McGee from the Committee. Based on his findings, Mr. Leonard is in the process of preparing a recommendation on how Montana might move to a simulation model for projections versus the flow model used currently. The simulation model projects future offender movements for each individual offender in the base population and for new admissions using a probability matrix built from historical trends. This simulation model has the advantage of providing projections for subgroups of offenders (by security level, age cohorts, offense groups). It is anticipated that the timeline for building and testing this simulation model is 2 years.

2. FINDING: The Committee finds that because of the small population of adult females in the institutional populations, the same methodology to calculate input variables used for adult males cannot be used for adult females; and because of a lack of a comprehensive database for juveniles, the same methodology is not being used to project juvenile institutional populations.

RECOMMENDATION: The Committee recommends that the Department develop valid, reliable, statistically significant methodologies to project both juvenile and adult female institutional populations.

DEPARTMENT RESPONSE: Because simulation models project at the individual offender level, similar models will be developed for female and juvenile populations once the male model is perfected. These models will still contain more variability than the male model, due to the smaller amounts of data used to develop future movements and the greater impact that one offender's experience (e.g., 500-year sentence for deliberate homicide) can have on that projection parameter (e.g., average sentence for homicide). Currently, the Department has the necessary historical data for females. However, the data is not available for juveniles. The necessary input variables will be captured by the new automation system.

3. FINDING: The Committee finds that the Department's "Corrections Population

Management Plan" contains a population projection for the total institutional population of adult males, adult females, and juveniles. The distribution of the projected population is on a facility or program basis and determined more by how the Department proposes to distribute their population based on facility capacity than by the type of placement that is required by virtue of inmate type or classification. Without specific analysis of the type of inmate and the most appropriate placement, the potential exists for the Department to build more hard cells than may be required for public safety and that may inhibit obtaining treatment or rehabilitation that may not be available on a timely basis in the higher security placements.

RECOMMENDATION: The Committee recommends that the Department review not only its methodology for population projections, but also its methodology for distributing the inmates throughout the institutional programs and facilities and review the possibility of using a risk and needs based assessment (i.e., classification, treatment needs, security risk, behavior), instead of facility capacity, to determine placement .

DEPARTMENT RESPONSE: As noted above, the simulation model whose feasibility the Department is currently examining would allow projections for offender subgroups. These subgroups could include projections by classification levels, programming needs, or special medical, such as HIV, populations.

Currently, risk and needs assessments prepared for each offender are used to determine the proper facility for placement. However, the Department may choose to use a higher level of security for many reasons in managing the population. In particular, the relationship of a given offender to other offenders within a unit or program. Therefore, the risk and needs assessment is just one tool in the placement decision.

#### B. Good Time

FINDING: The Committee finds that the full ramifications of the elimination of good time have not been calculated for their potential effect on the prison populations.

RECOMMENDATIONS: The Committee recommends:

- (1) that the Department pursue technical assistance to be able to

formulate population projections that incorporate the potential effect of the elimination of good time; and

(2) that the Department be proactive in making recommendations for good time for inmates on parole that balance the goals of public safety and the wise use of public resources.

DEPARTMENT RESPONSE: The Department, in its projections model, will include input vectors for good time. However, the Department currently has no statutory authorization for the recommendation of good time.

### C. Alternatives to incarceration and the need for public education

1. FINDING: The Committee finds that Montana has alternatives to incarceration available, but their full potential is not being realized.

RECOMMENDATION: The Committee recommends that the effectiveness of traditional alternative programs should be determined and the programs expanded accordingly. The potential for the programs to be altered for effectiveness for different populations (i.e., rural, tribal, female, and juvenile) must also be explored.

DEPARTMENT RESPONSE: A recently released Legislative Performance Audit of Prerelease and Intensive Supervision concluded that these programs are beneficial components of the corrections system. The Department estimates that by fiscal yearend 1999, 74% of adult offenders will be served through community corrections programs, including probation, parole, prerelease, shock incarceration, intensive supervision, and alternative chemical dependency programs. The number of probation and parole line officers has more than doubled since 1991, going from 48 to 99 by fiscal year 1999. This number would increase to approximately 131 in the 2001 biennium per the Department's budget request. Also requested is an expansion of the Missoula Prerelease Center to house a total of 80 male and 20 female offenders; the establishment of a 40-bed prerelease center in Helena; community alternatives for sexual offenders; and expansion and improvement of the Intensive Supervision Program. The Department is continually exploring and piloting community alternatives for targeted populations, the Connections program in Butte being the most recent example.



2. FINDING: The Committee finds that the Department has been actively involved in education of the public, but that more efforts are necessary. As correctional professionals, the Department staff is aware of the needs of inmates and the programs that are effective at accomplishing the goals of public safety, punishment, deterrence, and rehabilitation.

RECOMMENDATION: The Committee recommends that all of the participants in the corrections and criminal justice system, especially the Department, the Department of Justice and the Montana Board of Crime Control, and the District Court Judges have to work together to educate the public on the realities of public safety; risk and needs factors of victims, offenders, and communities; and the costs of the correctional system.

DEPARTMENT RESPONSE: The Department is continually striving to inform the public on the types of correctional facilities and programs utilized. The Department has a web page on the Internet; publishes a newsletter that is printed and distributed monthly; holds public meetings across the state; and participates in numerous radio, television, and newspaper interviews. Additionally, a recently released Legislative Performance Audit of Prerelease and Intensive Supervision concluded that these programs are beneficial components of the corrections system. The Department utilizes these performance audits both as a program evaluation tool and an informational tool for the public. As discussed above, 74% of adult offenders are currently being served through community corrections; the Department's Executive Budget Request expands community corrections alternatives even more in the upcoming biennium.

#### D. Program outcome or evaluation information

FINDING: The Committee finds that program evaluation or outcome information is lacking. The Legislature needs information for budgeting, and the Executive Branch needs information for management and planning for which programs work best, in order to make better-informed decisions about the most effective use of public resources.

RECOMMENDATION: The Committee recommends that program evaluation information needs to be incorporated into information and database systems that

are currently in development, as well as incorporated into the various programs, such as the sex offender treatment program, chemical dependency program, probation and parole, juvenile corrections, intensive supervision program, prerelease centers, and boot camp.

DEPARTMENT RESPONSE: The 1997 Legislature provided the funding for a new Correctional automation system that is currently under development. This system will track a number of program indicators. In the interim, the Research and Evaluation unit will present findings on the sex offender program, education program and correctional training program prior to the 1999 session. In addition, the Department will publish a legislative report providing descriptive statistics and information on all Department programs and contracts.

#### E. Intervening in Delinquency Pilot Project

FINDING: The Committee finds that the Department has successfully implemented the first phase of a pilot project to manage juvenile placement funds in a manner that provides for cost containment and allows local jurisdictions greater responsibility and freedom in determining juvenile placements.

RECOMMENDATION: The Committee recommends that the Department continue the pilot project and expand it up to a total of 10 jurisdictions that must include some high commitment districts. Any future development of the pilot project into a statewide effort must take into consideration the extent to which rural districts have sufficient economy of scale, program availability, and interest in participation and must address how the two secure youth correctional facilities will be incorporated into the project. The Department should also explore methods to assist judicial districts in sharing information about successful efforts and in developing additional community resources for youth.

DEPARTMENT RESPONSE: The Department agrees that at this time additional study of the concept would be beneficial and has drafted legislation to this end. Experience with 10 districts would give the 2001 Legislature more concrete data relative to the pilot concept. The Department will encourage judicial districts that historically have committed a high number of offenders to state-operated youth correctional facilities to be included in the expanded demonstration projects.

#### F. Aspen Youth Alternatives and Title IV-E federal funding

1. FINDING: The Committee finds that the Aspen Youth Alternative (AYA) program cannot access federal Title IV-E (foster care) funding at this time for the youth in its program and that other federal funds, specifically Medicaid funds for mental health care are not being used to the fullest extent possible.

RECOMMENDATION: The Committee recommends that the Departments of Corrections and Public Health and Human Services define the criteria and conditions under which AYA could be approved as an eligible facility and as providing allowable services for any Title IV-E eligible youth and that AYA make appropriate programmatic, facility, and services changes in order to effectively access Title IV-E funds. If this is accomplished and the Department seeks additional federal spending authority, the additional spending authority should not result in a corresponding reduction in the general fund, but the additional funding should be used to increase the contracted beds with the AYA program and to expand the aftercare phase.

DEPARTMENT RESPONSE: The Department supports the recommendation and fully agrees that options relative to Title IV funding should be fully explored. The Department has put forth a great deal of effort in exploring cost sharing alternatives. The recommendation is very much in line with avenues that the Department has been pursuing.

2. FINDING: The Committee finds that the judicial districts that administer juvenile probation offices and process dependency cases cannot directly access federal Title IV-E funding at this time.

RECOMMENDATION: The Committee recommends that the Department of Public Health and Human Services take the necessary steps toward developing the ability for communities and judicial districts to directly access appropriate federal funds for youth probation and dependency cases and services.

#### G. Board of Pardons and Parole

1. FINDINGS: The Committee finds that the Board of Pardons and Parole (Board) performs an important function in the correctional system and needs continued

support to adjust to the increased prison populations and the dispersement of the prison populations around the state with the relocation of the Montana's Women's Prison and the location of the regional correctional facilities in order to prevent a bottleneck in the parole process which effects prison populations.

RECOMMENDATION: The Committee recommends that the Board receive due consideration for their legislative proposals and be utilized as the resource that they are for continual review of appropriate use of prison resources.

DEPARTMENT RESPONSE: The Department agrees that the Board performs a significant role and that the Board needs appropriate resources to help perform its function. As the corrections system expands to regional and private prisons as well as more community-based programs, it is critical that the Board and its staff also expand and become more accessible to these new programs.

2. FINDINGS: The Committee finds that probation and parole violators are a significant factor in prison admissions, and the state must be progressive in providing a continuum of sanctions for parole and probation violators.

RECOMMENDATION: The Committee recommends that the Board receive technical assistance to review the conditions of parole and to develop a continuum of sanctions for parole violators. The Board needs to develop a risk and needs assessment that allows for the appropriate sanction for parole violators that provides the most cost-effective sanctions ensuring public safety and parolee accountability.

DEPARTMENT RESPONSE: The Department is very aware of the need for a "balanced" corrections system. A "balanced" system must have a variety of intermediate sanctions available to serve the needs of the offender while fulfilling obligations relative to public safety. The Department fully supports any technical assistance that the Board could acquire relative to sanctioning.

#### H. Permanent Corrections Oversight Committee

**FINDINGS:** The Committee finds that the issue of oversight for prisons in the state, especially the private prison in Shelby, warrants a permanent committee with authority to monitor and enter all prisons in the state.

The Committee also finds that there are issues in sentencing alternatives, procedure, and practices in the state of Montana that are unresolved in terms of clarity, balance, purpose, and intended consequences. Sentencing practices involve all three branches of government, and greater communication about expectations and goals must occur.

**RECOMMENDATION:** The Committee recommends that a permanent legislative committee be created for oversight of corrections issues, that the committee have authorization to enter any prison within the state of Montana, and that the committee conduct further research on sentencing practices in the state.

**DEPARTMENT RESPONSE:** The Department would support legislation to this effect (a sentencing study), much as it supported the continuation of the Montana Sentencing Commission during the last legislative session.

## **Issues Raised Before Subcommittees**

### **Detention Center (Jail) Standards**

#### A. Detention Center (Jail) Standards Inspection Program

**FINDING:** The Committee finds that the Montana Sheriffs and Peace Officers Association, in conjunction with jail administrators, representatives from the Montana Association of Counties, the Department of Public Health and Human Services, and the Jail Standards Subcommittee, developed a set of mandatory minimum standards for detention centers and a set for holding facilities and developed a recommendation to create a Detention Center Standards Inspection Program to be administered through the Montana Board of Crime Control, including implementing mandatory minimum jail standards through administrative rule to assist counties in complying with mandatory standards and, through that compliance, afford counties greater protection against liability for life, health, and safety requirements, as well as preventing violation of inmates' constitutional rights.

RECOMMENDATION: The Committee recommended that legislation be drafted and introduced for the Detention Center Inspection Program and providing the Board of Crime Control with rulemaking authority and a biennial appropriation up to \$200,000 for administration of the program. (See LC 225 in Drafts of Legislation).

DEPARTMENT RESPONSE: The Department would support such legislation. It is in the best interests of both offenders and the public that detention centers are appropriately managed and meet standards.

## **Populations and Projections**

### **B. Cost Per Day Per Inmate**

FINDING: The Committee finds that the traditional "cost per day" for correctional programs does not include certain costs such as debt service, general administration, industries training, and outside medical costs. This lack of information makes it difficult to analyze any comparison between publicly operated and privately operated correctional programs.

RECOMMENDATION: The Committee recommends that based on a methodology that has been agreed upon by the Legislative and Executive Branch staffs, that the Department will prepare a document that represents the actual and budgeted cost per day for the upcoming and future bienniums, that the document be submitted to the Legislative Fiscal Division (LFD) for review and that these figures be included in the LFD budget analysis for each legislative session.

DEPARTMENT RESPONSE: This recommendation will effectively end disagreements over cost per day differences and allow the Legislature and the Executive Branch to focus on the substantive issues that drive the daily cost of corrections.

### **C. Legislative Budget Document**

**FINDING:** The Department's "Corrections Population Management Plan" presented last session (1997) was based on fiscal yearend data that was developed by the Department for population management purposes. This data does not lend itself well to budget analysis for which an average daily population calculation is necessary in order to calculate cost per day.

**RECOMMENDATION:** The Committee recommends that a legislative budget document be developed each session, based on the Governor's budget for the Department. The purpose of this document is to assist legislators in budget analysis of correctional programs. This document should link directly to dollar amounts in House Bill No. 2 (the appropriations bill) and be based on average daily populations.

**DEPARTMENT RESPONSE:** Per the previous response, the Department supports the development of this budget document.

## **Juvenile Issues**

### D. Juvenile Detention Licensing Standards

1. **FINDINGS:** The Committee finds that the existing administrative rules for the licensure of juvenile detention facilities were transferred to the Department in the 1995 reorganization and needed to be reviewed in a juvenile corrections context.

The Department had convened a Task Force to work on amending the administrative rules for detention center licensing. Problems were identified in the administrative rule review process. Additional issues were raised to the Juvenile Issues Subcommittee who provided a forum for these concerns and provided a report on the issues regarding the Department and licensure of juvenile detention facilities.

**RECOMMENDATIONS:** The Committee recommends the following:

a. The Department Administrative Rules Drafting Committee should conduct an exercise of going through the proposed administrative rules that have been prepared. There should be a review of those rules in light of the American Correctional Association (ACA) mandatory standards and a comparison with the existing rules. The rules should represent the floor beneath which a detention

center may not fall. It was believed that there may be rules that could be pared down or consolidated and that some of the ACA language might be better than current Department language. There may need to be additional rules to cover the major life, health, safety, and other constitutional issues and to assist counties in preventing major litigation. Information was shared that Bob Verdeyen, ACA Policy and Standards Director, believes that the mandatory standards were not in and of themselves sufficient and that if any of the ACA mandatory standards are violated, then a facility should be closed down. As stated in the working group's definitions, compliance enforcement must be a necessary component of licensing. If there is no enforcement of the rules, such as provisional licenses, then what is the point of licensure? The Department of Public Health and Human Services (DPHHS) health statutes may offer some examples of statutory language for enforcement.

b. Once the new rules are completed, a similar exercise should be conducted on the inspection tool to see if it can become more user-friendly to deal with major issues without micromanaging a facility.

c. It was noted that the Montana Administrative Procedure Act (MAPA), in 2-4-305(3), MCA, requires a citation to the specific section or sections in the MCA that the rule purports to implement. It was noted that the statutory language guiding juvenile detention center licensing rules is sparse and that the Department should identify areas that may be necessary to request additional statutory language so that the Department has the appropriate authority and can enforce the rules that it adopts.

d. There may be other problem areas that the Department may identify in the above-recommended processes. If the problem areas are not able to be solved by the Department through the MAPA process or are perhaps inappropriate for the Department to address, then the Department should bring those issues and any recommendations back to the attention of the Committee.

DEPARTMENT RESPONSE: a. The Department and the volunteer rules drafting committee held 3 two-day meetings rewriting the proposed administrative rules on juvenile detention licensing. The last meeting was held in Missoula on September 21 and 22. The final product was sent to the Secretary of State's Office on October 13 for publication of notice of public hearing. The hearing will



be held November 12, 1998 at 10:00 a.m. in the Department basement conference room. Following the hearing there will be a comment period, response to comments, and publication of the adoption of these rules.

The Committee began with a directive from the Legislative Oversight Committee to take the old rules, the ACA mandatory standards for small juvenile detention facilities, and comments by the Legislative Council regarding form and content, as a basis upon which to redraft the detention licensing rules. The committee combined these to produce a final document that was approved by all committee members. Many portions of the old rules were excised because they were not necessary or not enforceable. As rules were drafted, the Committee reviewed each to ensure enforceability. Much of the language was replaced with the ACA standards language. The ACA language was not sufficient to address all major life, health, safety, and other issues, and so the ACA language was added to by using some of the existing language in the rules, and by drafting new language in many cases. For example, Mitzi Schwab of DPHHS drafted new language for health safety issues. The rewritten rules also took into account changes in the Youth Court Act from the last two legislative sessions.

b. The licensing inspection tool was streamlined during the rule rewriting process. The licensing specialist is testing a revised inspection instrument which is shorter, more clear, less onerous and more user-friendly. After final adoption of the rules and comment from the state detention centers, this instrument may receive a final revision.

c. The specific citation language showing implementation was updated in the revised rules. Because of an oversight, the rule reviewer will be submitting, pursuant to 2-4-305(8), additional citations for implementation of the rules in the adoption notice.

d. There do not seem to be other problems. In the beginning of this process, there were concerns about adequate representation from all areas of the state and all areas of the juvenile justice system. The Committee structure addressed that issue. The issue of “micro-managing” was addressed at length by the Committee during the rule writing process. All detention facility administrators or a representative were present at every meeting. On every issue, if there was not a complete consensus with the group, a vote was taken, and the rules were

revised in accordance with the majority vote. What one detention facility perceived as micro-managing often was perceived as a helping partnership by another. When those issues arose, a vote was always taken. Should problems arise, the Department will immediately bring them to the attention of the Committee.

2. FINDING: The Committee finds that there are unresolved issues as to whether there may be a more appropriate agency or structure within which the county-owned and operated juvenile detention facilities might be licensed.

RECOMMENDATION: The Committee recommends that the juvenile detention center licensing, in specific, and the juvenile corrections funding, including detention center funding, in general, be explored for more effective governance. The functions of juvenile probation and juvenile parole should be explored as well.

DEPARTMENT RESPONSE: The Department would support the idea of an examination of the functions of these respective areas.

#### E. Confidentiality and Juvenile Records

FINDING: The Committee finds that the migration of juvenile records from paper documents in each judicial district to electronic records in the Department of Public Health and Human Services Child and Adult Protective Services (CAPS) system has raised the issue of how an agency "seals" electronic records and if records are sealed, how program evaluation and analysis can be performed. (For background, see "Department information systems and technology " in Chapter 3.)

RECOMMENDATIONS: The Committee recommends that legislation be enacted to allow the electronic records in the CAPS system to be retained in the management information system for research and program evaluation purposes, with the name of the youth being disassociated from the offense and disposition information and maintained separately. (See LC 224 in Drafts of Suggested Legislation).

The Committee also recommends that the situation involving youth court records and automation be monitored and when automation systems are in place, that the

issue of juvenile records information system be addressed by the state agencies; youth courts, including district court judges and juvenile probation officers; and law enforcement. The issues that need to be thoroughly discussed include but are not limited to the type of information maintained and by whom; with whom it may be shared and for what purposes; the search for a method by which the judicial districts, law enforcement agencies, and state agencies notify each other of the existence of records; defining the responsibility for sealing or expungement of records; the extent of information that may be shared and whether it may be shared out-of-state; and the status of youth court proceedings as civil proceedings and which information can rightfully be considered criminal justice information.

DEPARTMENT RESPONSE: The Department wholeheartedly endorses this recommendation.

## **Private Prisons and Programs**

### F. Alternatives to incarceration in a prison

1. FINDING: The Committee finds that a significant number of admissions to prison are probation and parole violators. Currently, there are provisions and funding to hold parole violators in jail as a sanction. As additional prison beds come online in Montana, jail beds could be utilized for probation violators who would otherwise be sent to prison for certain technical violations.

RECOMMENDATION: The Committee recommends that legislation be enacted to allow certain probation violators to be held in jail as a sanction in lieu of entering prison. The District Court Judge would need to allow jail as a special condition and include it as a part of the court order. State responsibility for funding was identified as an important element in the legislation, with a possibility to pursue inmate contributions or reimbursement for jail costs. (Legislative draft was not completed at the time of publication.)

DEPARTMENT RESPONSE: Department information indicates that 3 days is optimal sanction for probation violators, and the Department has drafted legislation to that effect. The cost is currently the county's responsibility; any

change making the state responsible would have to be addressed in House Bill 2 (the appropriations bill).

2. FINDING: The Committee finds that punishment for a fourth DUI offense is not allowed in a private treatment program but must be served in a secure correctional facility. Currently there are no long-term secure private treatment facilities, but the Department has contracted a pilot project with the Butte Prerelease Center, Connections Corrections, for a combined treatment and correctional program that transitions offenders into traditional prerelease programs. It appears that this alternative is well suited to a fourth DUI offender. This proposal does not compromise additional federal funding through the Transportation Equity Act for the 21st Century.

RECOMMENDATION: The committee recommends that there may be certain cases where a fourth DUI offender may be better held accountable for their actions in a treatment facility combined with a correctional program such as the Intensive Supervision Program (ISP) or prerelease. These are intended as additional beds and should not compete with offenders coming to the program from prison.

DEPARTMENT RESPONSE: This can currently be accomplished within 61-8-732 by a sentence to the county jail. or a sentence to pre-release.

3. FINDING: The Committee finds that Title 53, chapter 30, part 3, MCA, the Community Corrections Act, allows local and tribal governments and private entities to operate community corrections programs and allows a judge to sentence an offender to such a program for up to 1 year with any remainder served on probation. Section 53-1-202, MCA, authorizes the Department to develop adult correctional services, defined as appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the placement criteria.

RECOMMENDATIONS: The Committee recommends that the Department : (1) be creative in exploring other alternatives, including restorative justice programs, such as Delancey Street and Crossroads; (2) make permanent and expand the Connections Corrections program to an additional prerelease center; (3) increase the number of probation and parole officers and that the Legislature fund

the additional officers; (4) explore a transition program from discharge for reintegration into society; and (5) look to the private sector for development of new programs.

DEPARTMENT RESPONSE: The Department has incorporated several provisions of this recommendation into its Executive Budget Proposal and is continually looking to the private sector for development of new programs, especially in community corrections.

#### G. Private Prison Cost Comparison

FINDING: The Committee finds that making a comparison of true costs between publicly operated and privately operated prisons is difficult and that the existing budgeting and accounting system format contributes to this difficulty.

RECOMMENDATION: The Committee recommends that the Department make adjustments necessary within their development of the new budgeting and accounting system to make the comparison of costs simpler between the correctional programs that they administer and the correctional programs that they contract to the private sector by separating individual facility and program costs.

DEPARTMENT RESPONSE: The Department is depending on the MTPRRIME application software to greatly assist in the development of cost segmentation by facility. However, due to the fact that some private providers that the Department contracts with for services list a large portion of their underlying costs as proprietary information, it may still be difficult to make cost comparisons due to the unavailability of this information.

#### H. Ad Hoc Committee on Sentencing

1. FINDING: The Committee finds that the sentencing statutes are confusing and that judges believe that their discretion has been limited by Department proposals adopted by the Legislature, such as the limit on Department commitments to 5 years, the policy to only allow the Department to determine which inmates can be placed in alternatives programs, and the limit on house arrest of 6 months.

RECOMMENDATIONS: The Committee recommends that the Department invest more time and energy into communications with the District Court Judges and the members of the Board of Pardons and Parole to recognize their concerns and to open up a dialogue within which each party can maintain its authority and integrity. Establishing an effort towards developing a better understanding of the problems and situations that each party is experiencing as a contributor to the correctional system should be pursued with a goal of a better-coordinated correctional system of common purpose.

The Committee also recommends that other options be explored, including:

- a. Sentence directly to Department community corrections programs, such as prerelease, intensive supervision, or boot camp. There is no intention to remove local screening committees or boards' ability to screen offenders for acceptance into a community program. The voluntariness or appropriateness for treatment can be administratively handled by probation and parole officers in a presentence investigation recommendation.
- b. Extend direct commitment to greater than 5 years (in essence to extend parole after a certain program is completed).
- c. Extend house arrest beyond 6 months.

DEPARTMENT RESPONSE: The Department has recently completed one-on-one meetings with each of the District Court Judges and has actively participated in the most recent judge's conference, informing the group of the Department's upcoming legislative agenda and responding to a variety of questions. This dialogue has proven extremely valuable for both parties, and the Department is determined to take every opportunity to maintain and enhance communication in this area. The Board of Pardons and Parole (Board) plays a pivotal role in Montana's correctional system and, through the Department's Probation and Parole officers, has daily contact with the line staff responsible for program operation. Staff of the Board served on a variety of departmental task forces and major policy directives either proposed or undertaken by the Department are always analyzed for potential Board impact. While there is already considerable dialogue occurring between the two entities, in this instance, more is better.

Judges currently have the ability to directly place an offender in prerelease, pursuant to 46-18-201(1)(a)(ix), MCA. The Department, pursuant to the dialogue

it had at the Judge's conference, is proposing legislation to add a direct commit to the boot camp.

The Department has submitted legislation to provide unlimited direct commitment to the Department, as a result of the Judge's Conference.

House arrest is a judicially ordered alternative to incarceration. If a judge orders house arrest, the Department merely supervises for the length of time the judge orders. Perhaps this change could be best pursued by the Committee.

2. FINDING: The Committee finds that Title 46, chapter 18, MCA, which provides for sentencing and judgment within criminal procedure, is confusing and rife with cross-references and internal references.

RECOMMENDATION: The Committee recommends that a bill to amend Title 46, chapter 18, MCA, be drafted to make nonsubstantive changes to clarify and streamline statutes, to eliminate contradictions and excessive internal references, and to amend areas in which statutory references and current practices differ regarding criminal sentencing and procedure. The draft should be distributed to the County Attorneys Association and to the District Court Judges for comment to determine whether to pursue the legislation next session (1999) or to recommend it to the next interim's oversight committee for further consideration. (See LC7777 in Drafts of Suggested Legislation).

DEPARTMENT RESPONSE: The Department sincerely appreciates the Committee's efforts in this area and would support these worthwhile changes.

## **CHAPTER 3**

### **CORRECTIONAL ISSUES REFERENCE GUIDE**

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The organization of the Reference Guide is by topic area: Correctional Standards, Population Projections, Juvenile Issues, Private Prison and Program Issues, and Department Issues. Exhibit numbers are given in parentheses to guide the reader in accessing relevant committee materials. All exhibits are filed in the Committee files, by meeting date. The Legislative Services Division may be contacted for further information.

#### **Correctional Standards**

One of the issues assigned to the Committee was House Joint Resolution No. 19 (Appendix A). The resolution required:

(1) that an appropriate interim committee be assigned to study and to make recommendations for minimum standards for correctional facilities, including county jails, state prisons, regional prison facilities, and juvenile detention facilities and for private facilities if authorized by law.

(2) that the committee review legislation from past legislative sessions and any standards that may have been developed in the past by any state or federal agency or private organization, including the standards developed by the Montana Sheriffs and Peace Officers Association and the Montana Association of Counties and current state and local building codes.

(3) that the committee review state, local, and federal law and regulations, current state and local building codes, and court decisions that have a bearing on the development of minimum standards for correctional facilities.

(4) that the committee review methods by which to ensure compliance with minimum statewide standards and current state and local building codes, review any impediments to agencies in complying with those codes and minimum standards, and make recommendations accordingly.

(5) that the minimum standards include the minimal services that must be provided to fulfill constitutional mandates.

(6) that the minimum standards be set in a manner that provides for public safety, crime prevention, and reformation and punishment of offenders and that complies with current state and local building codes.



(7) that the committee be authorized to secure information or assistance of any type from any governmental agency, board, or commission or from any independent organization. Any state agency, board, or commission shall supply information upon request of the committee.

(8) that the Committee submit to the 56th legislature a report of its findings and conclusions and include a complete set of proposed minimum standards and copies of proposed legislation.

Staff prepared a report entitled, "Correctional Standards and Limitations on Confinement" in June 1998 that provided a history of standards in Montana; a discussion of the legal issues regarding correctional standards and the conditions of confinement; state, local, and federal laws and regulations; state and local building codes; and a discussion of the status of standards of the various correctional facilities across the state.

A proposed set of minimum adult detention standards, juvenile detention licensing standards, American Correctional Association standards, and other resources are listed in the bibliography and are available in the Legislative Library.

#### Detention Center (Jail) Standards

The Committee formed a Jail Standards Subcommittee and assigned its members to work with a group composed of representatives from the Montana Sheriffs and Peace Officers Association, Montana Association of Counties, Montana Board of Crime Control, and the Department of Public Health and Human Services. The working group met regularly across the state and reported at each full Committee meeting. Staff and members of the Jail Standards Subcommittee attended the working group regularly. The working group received a grant and technical support from the National Institute of Corrections that assisted the participants in choosing a new direction. The technical assistance inspired a decision that the basic standards should be mandatory and provide basic life, health, safety, and other constitutional protections. The standards and procedures should be compliance-oriented and all efforts should be made in the process toward developing plans to assist counties in coming into compliance. Enforcement of the standards would be delayed in order for counties' facilities to be inspected and to get a baseline understanding of what would be necessary in their counties to achieve compliance and to develop plans for the future. Some

counties would need to make decisions on capital construction, whereas other counties may need only to develop policies and procedures. Many of the standards are policy and procedure-oriented and not bricks-and-mortar oriented.

The working group developed a set of mandatory standards from the existing voluntary standards and by referencing American Correctional Association standards for the operation of detention centers and holding facilities across the state. As the standards were being developed, an inspection process and reporting system were also developed. Decisions had to be made about where in state government this program would be administered. Since the Montana Board of Crime Control (Board) works regularly with counties and law enforcement agencies, it was selected. The working group agreed that standards should be handled through administrative rule rather than in statute. Rulemaking authority would be needed for the Board. The staff at the Board is limited, and therefore, a structure for inspection and enforcement needed to be determined. It was decided that the administration and jail inspection process could be a contracted service. Jail inspectors would actually be sheriffs and other law enforcement personnel who would be trained by the Montana Law Enforcement Academy and would be contracted to perform inspections around the state. Captain O'Hara, leader of the working group, reported at the May 1, 1998, meeting that he had conducted a test inspection of four jails and found that many of the issues revolved around lack of policies, or lack of knowledge regarding policies and what they mean, rather than the size of jail or the bricks-and-mortar. The Montana Association of Counties (MACo) has expressed an interest in pursuing the contract because of its related interest in the liability of counties. MACo is the self-insurer of many of the counties and could assist in compliance by dovetailing their insurance coverage requirements with compliance with the mandatory standards.

A summary was presented to the Committee and the Committee authorized legislation to be prepared for review. Legislation and an estimated budget was prepared. The Committee recommended that the legislation be introduced with a \$200,000 appropriation to the Board from the general fund for administration of the program. (See Appendices for the report and budget and see Suggested Legislation.)

## Juvenile Detention Licensing Standards

The Department inherited the licensing of juvenile detention centers during the 1995 reorganization when juvenile corrections was transferred from the Department of Family Services to the Department. Juvenile detention facilities are owned and operated by county governments and are used primarily to house preadjudicated juvenile offenders under the jurisdiction of the Youth Court Act. A 1997 change in law allows for limited postadjudication placement.

After reorganization, the Department had convened a task force to work on the administrative rules regarding juvenile detention center licensing. Following that effort and in the administrative rulemaking process, problems with the administrative rules were identified by Legislative Services Division legal review and members of the public raised additional issues before the Juvenile Issues Subcommittee. The Subcommittee appointed an Advisory Committee on Juvenile Detention Standards and Administrative Rules.

The Advisory Committee met May 21, 1998, and expressed that previous task forces had worked long and hard on juvenile detention standards and rules and that work should not be abandoned. The Advisory Committee began with defining terms to ensure that common understandings were held regarding each term. It was agreed that there should be different standards for short-term and long-term facilities. The Advisory Committee developed four basic recommendations for how the Department's Administrative Rules Drafting Committee should proceed and identified some basic problem areas that existed in the most recent proposed administrative rules. The Advisory Committee submitted a report to the Department.

The Department continued the Advisory Committee with a limited modification in membership. The Department's Task Force continued to meet throughout the remainder of the interim and completed their work in September 1998. The Department filed a Notice on Proposed Adoption of New Rules with the Secretary of State on October 13, 1998 and intends to adopt the rules by December 1998 (see Department Response to the Committee's Findings and Recommendations in Chapter 2).

## **Population Projections**

### Inmate Cost Per Day (Per Diem) and Legislative Budget Document

The Populations and Projections Subcommittee pursued the determination of actual costs per day for incarcerating inmates in state facilities so that a figure could be used for budget purposes and for comparison to costs at private facilities, in-state or out-of-state. In an October 1, 1997, response to a legislative request by Representative McGee, the Legislative Audit Division (see Bibliography) summarized information from Department personnel and other legislative agencies regarding the methodology for determining cost per day and identified other factors that could be considered when evaluating or comparing per diem rates between the Montana State Prison and other correctional facilities.

Staff from the Department, the Legislative Services Division, the Legislative Audit Division, the Legislative Fiscal Division, and the Governor's Office of Budget and Program Planning met to agree on a methodology for calculating these costs and a timetable and process for determining these costs. In a letter from the Department, it was agreed that in September prior to a legislative session, the Department would prepare cost figures covering all costs to administer prisons, based on the Governor's budget. The numbers would be reviewed by the Legislative Fiscal Analyst's Office and be available for use during the legislative session. The Legislative Fiscal Division will incorporate the information into the budget book published for the legislative session (Exhibit # 7, January 23, 1998).

In order to research the factors involved in comparing costs of a state-operated prison to costs of contracting with a private prison, Legislative Services Division staff prepared a research report entitled, "Cost Comparisons Between State and Private Correctional Facilities: Apples to Apples?" in February 1998. This report discusses some of the caveats to comparing cost figures within a state, between states, and between private and public facilities. Within the report is a table of correctional factors and a table of business factors that affect cost comparisons between state and private prisons. Correctional factors include the size of the facility, programs, inmate types, and use of force, discipline, and release decisions. Business factors include location, administrative process, taxes, type of construction, level of investment risk, historical limitations, right of refusal,

insurance, liability and standards, supply and demand, percentage of capacity, regulation, and administrative costs. The Committee inquiry has resulted in additional information that will make the comparisons more useful and the research report is available for others who wish more information.

In conjunction with an interest in cost per day figures, the Population and Projections Subcommittee was interested in a budget document that related population figures more directly to budgets. The Department's Corrections Population Management Plan is based on fiscal yearend correctional facility populations. The population figure needed for analyzing a cost per day for inmates is an average daily population (ADP) which averages the population of the facilities over the course of a year. Whereas fiscal yearend data give the population count for a day certain, an agency could not budget that figure accurately for every day of a fiscal year; therefore, an average gives the best budget estimate figure. The Department must manage a correctional population for the highest number expected, but the costs are averaged over an entire year (Exhibit # 6, January 23, 1998).

The Committee recommended that this Legislative Budget Document be prepared, based on the Governor's budget, for the adult male, adult female, and juvenile populations. It will contain tables of the average daily populations for each category of the institutional population, the cost per inmate day that ties to House Bill No. 2 (general appropriations bill) but does not include major medical, department administration, and debt services expenses. The table contains annual costs with figures for the current and next bienniums in each table (Exhibit #1, September 12, 1998).

Although all of the costs are not included in the cost per day in this document, it will tie directly to costs that show up in House Bill No. 2 and there will be a section in the budget book dedicated to illustrating all of the costs, including those in House Bill No. 2 and those in other appropriations such as major medical, department administration, and debt service expenses. There are limitations to the use of this form. Changes in cost per day from year to year reflect not only inflation, but also costs for improvements authorized by past Legislatures. Thus, comparisons are only as good as the understanding of what costs are included in each institution's costs, and a one page document creates and nearly guarantees the potential for oversimplification.

The Committee made the use of a cost per day methodology document and a legislative budget document a formal recommendation.

## **Juvenile Issues**

### Support of requests for federal grants for tribal juvenile detention

At the June 19, 1998, meeting, the Committee endorsed a letter of support for each of the Blackfeet, Fort Peck, and Northern Cheyenne Indian Reservations' applications for federal grant money for juvenile detention facilities in Indian Country (Exhibit # 9 , June 19, 1998).

### Juvenile Justice Accountability Incentive Block Grant

A federal Juvenile Accountability Incentive Block Grants program was brought to the attention of the Committee. In order to qualify for the program, the state had to certify that it was actively considering certain accountability based sanctions for violent and repeat juvenile offenders. The Committee sent a letter to Governor Marc Racicot to assist in certifying to the U.S. Attorney General that Montana would qualify for the program (Exhibit #10, March 6, 1998). The issues that the Committee actively considered were the Extended Jurisdiction Prosecution Act and confidentiality and juvenile records. The Committee certified that there were graduated sanctions provisions in the Youth Court Act, and the Committee did not endorse a proposal by the Montana Juvenile Probation Officers Association to repeal provisions from the act unless substitute language that maintained accountability was suggested.

### Extended Jurisdiction Prosecution Act (EJPA)

The EJPA was enacted in 1995 (House Bill No. 380, Ch. 438) to provide that for certain youth under the Youth Court's jurisdiction, the Youth Court could impose an adult criminal sentence that is stayed on certain conditions, including a Youth Court disposition. If a youth violates a condition of the stay, including the Youth Court disposition, the youth's case is transferred to District Court for imposition of the adult sentence.

The Montana Supreme Court ruled the EJPA (including the 1997 Legislative changes) unconstitutional on the grounds that it violates the Montana Constitution at Article II, Section 4 (equal protection) and Article II, Section 15 (rights of minors). Since 41-5-208, MCA, was enacted at the same time and has many of the same legal issues, the Juvenile Issues Subcommittee recommended repeal of the EJPA and 41-5-208, MCA.

The Committee did not take any action on the Subcommittee proposal to repeal the EJPA and 41-5-208, MCA, as other proposals by the Department were still being formulated.

#### Confidentiality and Juvenile Records

Representative Bergsagel brought to the Subcommittee a concern regarding a directive to juvenile probation officers to purge their files for juveniles whose supervision had been completed for 3 years. Section 41-5-216, MCA, provides for physically sealing records 3 years after supervision ends and upon physically sealing, other agencies that have in their possession copies of these records must seal or destroy the copies of the records.

The statutes are silent on much of the process by which this happens but with the incorporation of the Juvenile Probation Information System (JPIS) into the Child and Adult Protective Services (CAPS) system, the information is now maintained in an electronic form and integrated into files for youth that are under the child protective system of the Department of Public Health and Human Services (DPHHS). Some of these youth are in both systems at different times, and those who are in only the juvenile corrections system have their information entered for purposes of out-of-home placement and payment by the Department.

The concern was that records that might be useful for program evaluation and research would be destroyed and the information not be available to determine what programs or services might be most effective and therefore most cost-effective. Rep. Bergsagel expressed that when legislators are dealing with the very private and sensitive nature of families, strong evidence is needed that programs are effective before that privacy is breached, and the Legislature's interest is to invest dollars in the most successful programs and services.

The Juvenile Issues Subcommittee recommended legislation so that the offense and disposition information that is placed in the CAPS system be disassociated from the name and remaining information in the CAPS system and that the information only be used for research and program evaluation. There was great concern that this information needs to be sealed or disassociated from the youth's name so that the information does not compromise the youth's ability to get out of the system and become a productive citizen.

Another records-related issue raised by the Committee concerned the ability of law enforcement to access and share records on youth who, at the more serious end of the juvenile system, are committing felonies, especially violent or sexual offenses. The technology and systems for this sharing of records are just being developed. The Committee expressed their feeling that youth deserve a second chance. For the majority of youth who do not continue in the criminal justice system, the Committee expressed concern that if this information were shared nationwide, there would be future ramifications. Consequently, they declined to authorize any further sharing of records or development of systems to do so. Some members expressed that it was an issue that may be more timely raised when the actual information management systems are in place and at that time, based on the capabilities of the systems, the discussion should be held. The discussion must include whether all records of youth who are in Youth Court or only those at the serious end of the juvenile justice system, without having been transferred to the adult system, should be shared. One issue is whether the youth have received all of the protections of the adult criminal justice system so as to make the information equivalent to adult criminal records and whether or not the juvenile justice information is, in fact, criminal justice information when the Youth Court is still essentially a civil process.

#### Montana Juvenile Probation Officers Association

Representative Bergsagel, Representative McGee, and others invited the Montana Juvenile Probation Officers Association (MJPOA) to bring forward their ideas for changes necessary in the Youth Court Act. The MJPOA reported their recommendations to Representative Bergsagel on July 31, 1998. The Committee received a copy of the letter on August 20, 1998.

Excerpts from the July 31, 1998 letter:



Position 1. The Association recommends that Youth Court Act language limiting consent adjustments and decrees revert back to the provisions in place prior to the changes made during the last legislative session. This reversion will restore probation officers' ability through formal court and informal proceedings to ensure prompt youth accountability for offences and protect the community. It will also eliminate the "3-misdemeanor requirement."

Position 2. The Association recommends clarification of the Youth In Need of Intervention statute to specify that a youth with previous involvement with DPHHS be referred back to DPHHS for continuation of services. We are also recommending an amendment to ensure that 6 months of counseling/intervention with the youth's parents, foster parents, physical custodial or guardian for mediation, resolution and control of the youth's behavior is attempted prior to Youth Court intervention. It is recommended that financial resources from private, Insurance, Montana Community Partners, DPHHS and Department of Corrections sources be employed during this 6-month period.

Position 3. The MJPOA recommends that alternatives to the present Mental Health Managed Care be developed to ensure that mentally ill youth do not default into the juvenile justice system due to improperly defined and/or implemented eligibility requirements and other MHMC program barriers.

The Committee was unsure of the extent of the problems statewide and did not take any action on behalf of the Association, but Representative Bergsagel asked them to work on some additional proposals to accomplish their goals. Regarding Position 1, the Committee was not willing to simply repeal the language that was intended to provide a certain level of graduated sanctions to hold youth accountable, without some substitute language that ensures a level of accountability. Language was suggested that youth who have three misdemeanors must come before the judge for review of the disposition without a formal petition, or if a formal petition has been filed to clarify that the disposition could still result in a consent decree.

Regarding Position 2, the Committee was reluctant to dictate solutions because of other efforts in local jurisdictions and other state agencies.

Regarding Position 3, because of the uncertainty of the status of the managed care contract for public mental health services, the Committee did not address this issue.

## **Private Prisons and Programs**

### Offenses counted towards felony fourth or subsequent offense of Driving Under the Influence (DUI)

Fourth DUI statutes were amended in 1995 to make a fourth or subsequent DUI offense a felony providing for up to a 10-year prison sentence. In 1997, because of a great influx in prison population, the sentence was amended to a fixed 6- to 13-month correctional sentence (prison or other secure correctional facility or program). This change to a felony status impacted the interpretation of calculating past offenses toward the fourth DUI.

John Paulson, Assistant Attorney General for the Montana Department of Justice, presented the Committee information about how DUI offenses are counted towards a fourth DUI offense. Any DUI conviction that occurred prior to October 1, 1989, and was followed by 5 years without another DUI conviction would be deemed expunged (obliteration of any trace of information) from a person's driving record at the Department of Justice's Motor Vehicles Division. A defendant may also challenge an earlier conviction if the defendant can show that the defendant was not advised of right to counsel, or did not waive their right to counsel, and went forward without the assistance of an attorney. If the state cannot counter the evidence, the earlier DUI conviction cannot be used to enhance the punishment for a subsequent DUI conviction.

### House Bill No. 83 and the private prison issue

The 1997 Legislature passed House Bill No. 83 (Ch. 511) allowing for the regulation of private correctional facilities and providing that the Department pursue a request for proposals for a private prison facility in Montana. Administrative rules for siting and construction standards of private correctional

facilities in Montana and the rules timetable were presented to the Committee in October 1997 (Exhibit # 19, # 20 October 3, 1997). A request for proposals was issued, and seven companies responded with an intent to propose. All seven companies attended a December 15, 1997, pre-proposal conference in December 1997 (Exhibit # 11, January 23, 1998).

At the May 1, 1998, meeting, the Committee received an update by the Department on a lawsuit brought by the Great Falls *Tribune* regarding whether the Department's review of the request for proposals for a private prison should be an open public process. The Department contended that its closed process was following statute. The Montana Supreme Court issued a temporary injunction that halted the process temporarily. The Supreme Court found that the statutes providing for the closed process were unconstitutional and allowed public access to request for proposal documents and ranking procedures. The delay did not hinder the process.

The process was also delayed by controversy over a potential ballot issue by Toole County citizens and its possibility of halting the process entirely. Opponents sought a temporary restraining order against the project, but that order was not granted. House Bill No. 83 required public approval of any site, and although the Toole County Commissioners approved the site in Shelby, certain citizens worked to have the issue placed on the November 3, 1998 ballot. The referendum effort had the potential to halt the procedure altogether. Judge Honzel ruled that if the referendum qualified for the November ballot, it would suspend the 2-1 vote taken by the Toole County Commission in February of 1998. If the voters turned it down, the Department could not issue a license to the corporation, therefore halting the process. Ultimately, the referendum did not qualify for the November ballot.

At the August 20, 1998, meeting, Mike Wingard of the Legislative Audit Division presented the Committee with information regarding the review of the contract award procedure as required in House Bill No. 83 (Exhibit 18, August 20, 1998). He also presented information regarding the review of the Department contracts of 10-year duration or more with private, nonprofit corporations which operated prerelease centers (Exhibit # 19, August 20, 1998).

The Department awarded the private prison contract to Corrections Corporation of America on July 22, 1998, and groundbreaking took place in August 1998. The facility, Crossroads Correctional Facility, will be sited in Shelby and will house 500 minimum through close security inmates with a target date initially planned for September 1999. The prison is able to expand in 250-bed increments and the core facility is being built to eventually accommodate 1,500 inmates.

#### Nonstate facility placement of Montana prison inmates

At the early stages of the interim, the Committee, with public input, spent time examining the conditions that the Montana inmates were subject to at a Bobby Ross Group-operated facility, the Dickens County Jail in Spur, Texas. The Department ended its relationship with the Bobby Ross Group, and all inmates were removed by December 10, 1997. Of those inmates, 91 were moved to a Correctional Corporations of American facility in Arizona, 102 inmates to Mason, Tennessee, 66 returned to the Montana State Prison-Deer Lodge (MSP), and 1 remained in Texas subject to interstate transfer. The Tennessee facility census was 120 Montana inmates on November 7, 1997, and up to 246 inmates on October 6, 1998, of a 450 inmate contract capacity.

The Arizona facility was intended as a sex offender treatment facility with 124 sex offenders on January 23, 1998 and 125 on March 6, 1998. The Arizona facility had trouble maintaining a constant treatment program because of staffing. The Arizona contract is for a cost of \$51 per day.

At the May 1, 1998, meeting, Department Director Rick Day indicated that a maximum of 40 inmates would be placed in Gallup, New Mexico. Adult female inmates from Montana Women's Prison (MWP) were transferred in May, 1998. The cost per day is \$71 per inmate with a decrease to \$66 per day per inmate in the second year. The cost does not include outside medical costs, and any costs beyond a \$2,000 deductible for routine medical costs will also be Montana's responsibility. The contract is a 2-year contract, renewable for 7 years. At the end of September, the MWP held 70 inmates (design capacity is 46); 29 inmates were in New Mexico and 28 were in county jails across the state. In early October 1998, additional inmates were transferred to New Mexico to bring the total to 40 female inmates placed out of state.

The Committee received regular updates on county jail placement: County Jail Holding, Probation and Parole (Exhibits #17 and #18, October 3, 1997). As of November 5, 1997, there were 180 males active on the county holding list. Between 70 and 80 males and 12 females were on the list on March 6. County jail placement is significant for the following reasons:

- (1) costs vary between \$32 and \$78 per day per inmate, averaging \$45 to \$47, which may be more than the cost at a state facility or a private prison given the services received;

- (2) the Department is still responsible for any outside medical costs;

- (3) inmates do not receive any programming (treatment, education, etc.) while in jail, which may affect their parole eligibility and increase their length of stay for no correctional purpose;

- (4) dependent on length of stay, inmates may reach their parole eligibility date while still in jail and therefore cause procedural difficulties for the Board of Pardons and Parole;

- (5) jail overcrowding affects local law enforcement's ability to manage their local jail populations effectively; and

- (6) some jails, especially smaller jails, are becoming more and more reliant on state dollars to fund their local jails.

#### Regional correctional facilities

Regional correctional facilities authorized by the 1995 Legislature (House Bill No. 304, Ch. 316, and House Bill No. 585, Ch. 475). A regional correctional facility is a joint venture between the state and local governments that allows for the construction or renovation of a correctional facility for the housing of convicted felons and the operation of the facility by the local government through a long-term contract with the state. The local government also operates a detention center for their local correctional needs (pretrial, misdemeanants).

The Department has entered into agreements with three counties for regional correctional facilities. The first, Cascade County, was operational by January 1998 and has the ability to hold up to 152 inmates. By the March 6 Committee meeting, all 152 beds were filled with state inmates, including some female inmates. A Dawson County facility is expected to be online in November 1998 with a capacity of 144 state prison beds. Missoula County is projecting an

availability of 144 state prison beds by September 1999 and will also contain a juvenile detention facility.

State, local, and federal funds were utilized to build these facilities. The state's share of the design and construction for all three contracts is \$9,235,000. The Cascade County contract state share was \$4.5 million (general obligation bonds), Dawson County contract state share was for \$4.4 million (general obligation bonds) and Missoula County Contract state share was \$500,000 for planning and design and a \$4.5 million federal grant. Each county passed bond elections supporting and financing their share of the facility. The Department will pay per diem costs for each inmate, not to exceed the cost at MSP, and be responsible for outside medical costs. The contract allows for a 30-year term with options to renew and penalties for termination or violation of contract. The state guarantees one-half of the state inmate bed capacity (Exhibit # 16, October 3, 1997). The Committee received an in-depth report on the plans for the Missoula facility by Captain Mike O'Hara on January 22, 1998. Some areas of concern exist with the regional correctional facility contracts and the extent of detail in the contracts. If sufficient detail does not exist, enforcement of contract provisions is difficult, if not impossible, and leaves both the state and the counties vulnerable.

Southwest Montana Multijurisdictional Detention Center and Montana Energy Research and Development Institute, Inc. (MERDI)

A proposal was made to the 1997 Legislature and subsequently before the Committee to allow a detention center operated by multiple counties to also contract with the state for state inmates. Although similar to a regional correctional facility under Title 53, chapter 30, part 5, MCA, this facility would be, in fact, a detention center or jail under Title 7, chapter 32, part 22, MCA, but built to standards and with programming that would allow the Department to place adult male inmates at the facility for terms longer than 1 year. A July 8, 1997, analysis of the feasibility of a Southwest Montana Multijurisdictional Detention Center was conducted by Legislative Services Division Chief Legal Counsel, Greg Petesch (Exhibit # 21, July 25, 1997).

In order to access private sector funding, the proposers were working with the Department and requested a letter of intent to contract. At an October 3, 1997 meeting in Deer Lodge, Don Peoples of MERDI made a presentation (Exhibit #10)

and explained that in order to use industrial bonds, they were proposing a preference for inmate placement, after MSP and when the three regional correctional facilities were at the capacity guaranteed by contract (50% guarantee). Officials of Community, Counseling, and Correctional Services, Inc. (CCCS) of Butte, were working in conjunction with MERDI and would handle the correctional aspects of the proposal. The county governments were represented by Jack Lynch, Chief Executive, Butte-Silver Bow County. Department Director Day responded with population projections (Exhibit # 12), and pros and cons (Exhibit # 13), and he expressed a desire to proceed with letter of intent language (Exhibit # 14). Greg Petesch presented a summary of statutes implicated in the MERDI proposal (Exhibit #15, October 3, 1998).

At that meeting, the Committee approved MERDI, the Department, and a Committee member (Rep. Bergsagel) working together to write a letter of intent from the Department to the proposers that would address the Committee's concerns about: (1) the issue of out-of-state prisoner placements, (2) the provisions of House Bill No. 83 (Ch. 511, L. 1997), (3) the detention facility versus correctional facility issue, and (4) the preference language and its effect on any private-sector corporations that may want to come into Montana.

A letter was drafted by the Department and reviewed by the Committee's legal counsel. The Committee held an October 17, 1997, conference call in which the Department discussed a draft letter of intent with the Committee to obtain their consideration and approval. The Committee was consulted in an advisory capacity only and had no authority to prevent the Department from proceeding as they wished. The Committee voted 5 to 3 to accept the proposed letter of intent. The letter provided that if the facility would meet appropriate construction and operation standards and if the Department was able to negotiate a rate and contract terms favorable to State interests, the Department would be willing to enter into a long-term agreement with the counties of Butte-Silver Bow and Anaconda-Deer Lodge. The agreement would provide the proposed detention center a preference for confinement of Montana adult male inmates when Montana's male institutional system was at emergency capacity, provided that suitable programs were available, before inmates were confined at other privately operated, contracted correctional facilities. Applicable provisions of 53-30-601 through 611, MCA, (siting, public approval, operations) would apply and no out-of state inmates would be allowed in the units under contract to the Department.

The Department sent the letter to MERDI and included a provision that if the facility was not online by December 1, 1999 the letter of intent would be void (Exhibit # 23, November 7, 1997). As of the January 23, 1998, meeting, the Department continued to include the Southwest Montana facility online in the Correctional Population Management Plan as of October 1999 with a fiscal year end 2000 capacity of 450 inmates rising to a capacity of 500 inmates by fiscal year end 2001 (Exhibit # 5, January 22, 1998).

At the March 6, 1998, meeting, the Department informed the Committee that MERDI needed a contract rather than a preference letter in order to receive financing. The Department was involved in negotiations with them. (At this time, the potential sale of the Galen campus was mentioned and was brought before the Land Board. This concept was the original one raised in the 1997 Legislative Session). By the August 20 and 21 meeting, the Southwest Montana proposal was no longer included as a part of the Department's Corrections Population Management Plan. Because of slower growth in admissions, the Department had revised its population projection based on preliminary fiscal year 1998 experience. The Southwest Montana group had asked the Department for a contract in addition to the letter of preference in order to secure financing and had had trouble in finding a site for their proposed facility. The group returned to an original concept presented to the 1997 Legislature of pursuing the Galen campus.

At an August 1998 Land Board meeting, the sale of the Galen campus was approved by the Land Board. As of the end of September 1998, a bid by Anaconda-Deer Lodge County for the Galen Campus had been accepted and a waiting period was in effect. The multijurisdictional detention facility was still one of the possibilities held for the campus.

#### District Court Judges Conferences

Several Committee members attended the Judges Conference in Whitefish on May 18. The concerns of the judges were as follows: that Titles 45 and 46 be revamped to clear up conflicts and bring logic to the laws; that Department commitments be longer than 5 years; that funding be provided for local programs authorized by the Community Corrections Act; that there is a need for drug courts and a need for direct sentences to community corrections rather than through the Department; that there is the presence of animosity towards and problems with



Department in communication and trust; front-end dollars for prevention are desired; and that there is a need funding for parole officers and juvenile programs.

Committee members met with the judges at an October 6 meeting in Red Lodge and reported that the District Court Judges desired greater flexibility in sentencing and wanted to be able to provide a Department commitment with a long term of supervision to follow. Concerns were also expressed regarding Department policies that attempt to limit Judges' authority in sentencing and with parole eligibility.

#### Ad Hoc Committee on Sentencing

The Private Prisons and Programs Subcommittee was interested in sentencing issues and desired some input from the various sectors of the criminal justice system involved in sentencing. They created an Ad Hoc Committee on Sentencing that included Honorable Ted Lympus and Honorable Robert Holmstrom, who was replaced by Honorable Kenneth Neil, John P. Connor from the County Prosecutors Services Bureau of the Department of Justice, David Stenerson, Roberta Drew, and Tammy Plubell, Assistant Attorney General and former Montana Sentencing Commission Administrative Officer. In reviewing sentencing issues, it was suggested that a review of the sentencing statutes was needed similar to that of the Commission on Criminal Procedure that had accomplished its review over a decade previous and reported to the 1991 Legislature. Significant changes had been made to Titles 45 and 46 resulting in duplication, inconsistency, contradictions, excessive internal references, and areas in which statutory references and current practices differ regarding criminal sentencing and procedure. It was decided to contract for an attorney to specifically review Title 46, chapter 18, MCA, "Sentence and Judgment". The Committee believed that this was the area of greatest confusion and by beginning there, it would assist any future review of Titles 45 and 46, MCA, in their entirety. This is also the area that has been amended most greatly over the past decade in the form of increased sentencing requirements that have limited judicial discretion and increased prison populations, such as mandatory minimums, two and three strikes laws, and the repeal of the dangerous offender law.

A contract for services was authorized at the March 6, 1998, meeting in Great Falls (Proposal, Exhibit # 12, March 6, 1998). The contractor, Luke Foust, a

public defender in the First Judicial District, met regularly with staff and the Subcommittee and presented a summary report entitled, "Report on the Revision of Title 46, Chapter 18, MCA" to the Committee at its August meeting (Exhibit # 7, August 21, 1998). The contractor also provided a more in-depth report for the record. A rough draft of legislation was presented at the September 12 meeting (Exhibit # 5, September 12, 1998). John Connor of the Prosecution Services Bureau of the Department of Justice submitted written testimony of the desire of the County Attorneys to review the legislation before the Committee took further action (Exhibit # 6, September 12, 1998). He expressed concern that even a clean-up bill could raise unintended substantive issues and new interpretations of existing law.

As the various parties represented on the Ad Hoc Committee had not had time to review the draft, the Committee adopted a recommendation to complete the bill draft and circulate it to the County Attorneys, District Court Judges, and other parties for comment. The possibility of introducing the legislation to the 1999 Legislature was left open depending on how the draft was received. If the draft is not introduced, it will be forwarded to a future potential legislative committee that would be charged with studying sentencing issues.

#### Alternatives to incarceration or intermediate sanctions

The Subcommittee reviewed the alternative sanctions to prison or intermediate sanctions currently available in the state. The alternatives available through the Department include the Intensive Supervision Program (ISP), prerelease centers, and boot camp. A Department commitment is a sentence that is allowed up to 5 years and enables the Department to place an offender in one of these programs and if no placement is available or appropriate, prison may be the placement. ISP, prerelease and boot camp each have certain requirements for eligibility including availability of the program and a Department and a local screening process. The boot camp has certain age and physical conditions for eligibility. Until recently, boot camp was only available to male offenders.

The members of the Committee are interested in fully utilizing alternatives to incarcerations for appropriate populations. Other intermediate sanctions that may be necessary to develop further involve treatment in a community setting. The Department had a pilot program involving chemical dependency treatment in

a more secure prerelease setting. Availability of many of these sanctions is limited to the larger communities in the state. Wider availability to the middle sized communities and rural areas needs to be developed. Treatment programs in the prison that are appropriate are also needed, and finally, there are special populations, including Native Americans, women, juveniles, geriatrics, persons with mental health issues, and sex offenders, for whom specific programming may be more effective in reducing recidivism and maintaining a person in or returning a person to a community setting.

#### Good time credits

The issue of granting good time credits to inmates and its repeal was raised by the Subcommittee. When the Department presented its population projections throughout the interim, the impact of the elimination of good time had not been calculated, basically accepting a default assumption that District Court Judges would change their sentencing practices to offset the potential longer length of stay in prison. Committee staff conducted a survey of District Court Judges, County Attorneys, and Probation and Parole Officers to elicit information on any changes in presentence investigations, sentencing recommendations, and sentencing practices. The survey results illustrated that many participants were unaware of the changes in good time law or policy or did not believe them to be pertinent to their role in the system. Most judges were not, in fact, changing their sentencing practices at the time of the survey.

A report entitled, "Policies on Good Time and of the Effects on Sentencing Practices: History and Survey Results" was presented to the Committee in June of 1998. The basic finding was that:

The good time survey was accomplished in a short span of time and is informational rather than statistical in nature. While considerable followup is needed, the survey was effective in revealing information that if acted upon by the [Department] could assist in eventually mitigating prison overcrowding concerns. The effects of the elimination of good time must be analyzed and incorporated into future prison population projections. The survey reveals that the District Court Judges, County Attorneys, and probation and parole officers all make certain assumptions about the [Department] and the [Board of Pardons and Parole] that are not accurate or shared. By implementing a thorough educational and information-sharing process that ensures that the contributors to the correctional populations are fully informed, each participant

becomes a stakeholder in the system. Most importantly, the survey indicates that the Legislature needs to provide clearer direction and parameters in statute for sentencing and that an effort to review and revise sentencing statutes may be in order.

The Department did not calculate the effect of the elimination of good time on the population projections by the end of the interim. The Department did receive technical assistance from the National Institute of Corrections on population projection methodology and it was presented that if the Department does change its methodology, that the effect of certain scenarios, such as the elimination of good time, could be run to determine the effect on prison populations.

#### Reparative or restorative justice

The Committee received information on reparative or restorative justice programs from many sources. Reparative or restorative justice is basically a different paradigm or way of thinking from the traditional criminal justice approach of retributive justice. The basic principles of restorative justice as developed by Gordon Bazemore for juvenile offenders, but applicable to adult offenders as well, takes a three-pronged approach for victims, offenders, and communities consists of:

- (1) accountability of the offender for actions and the consequences to the victims and the community;
- (2) community protection through intermediate, community-based surveillance and sanctioning to channel offender's time into productive activities;
- (3) competency development, including work experience, learning and service opportunities to demonstrate capability for productive, competent behavior.

At the January 1998 Butte Cares meeting at which legislators and staff were in attendance, Dennis Maloney from the Oregon Department of Community Justice spoke of his department's programs and their success in shifting the focus from probationary services and the traditional criminal justice model to community justice and restorative justice model.

At the March 6, 1998, meeting, the Committee learned of the many community programs in Great Falls that fit a restorative justice model: a victim-offender

mediation program (Exhibit # 16, March 6, 1998) and the community youth justice council (Exhibit # 15, March 6, 1998).

At the August 21, 1998 meeting, two members of the public spoke on reparative justice in action. Earl Pease, Bozeman, spoke about local programs that he was administering and of his interest in the state doing more to support local programs and groups in reparative justice (Exhibits # 20 and 21, August 20, 1998). Casey Nestle, Bozeman, a former MWP inmate, has formed a nonprofit corporation that tries to provide a bridge for offenders to the mainstream life to give them support in their transition from institutionalized life to life on the streets (Exhibit # 22, August 20, 1998).

At the September 11, 1998, meeting at the Wheeler Conference on Corrections, one of the members of the nationwide panel, Elyse Clawson, represented Multnomah County, Oregon, Department of Juvenile and Adult Community Justice and spoke of the success of their restorative justice programs and the change of mind-set that it took.

The Committee often inquired, "What can the Legislature do to assist you?", and the response most often received was, "Leave us alone." Nevertheless, the Bozeman contingent was in favor of the state supplying funding and technical assistance to communities to enable them to develop these programs, and they expressed a desire to receive assistance from the Department. The members of the Private Prisons Subcommittee were pursuing ideas for state assistance to communities for restorative justice at the end of the interim. The states of Minnesota and Oregon have pursued restorative justice to a greater extent than other states and were being researched for information on programs and models.

#### Native American issues

At its March 6, 1998, meeting, the Committee received written testimony from Wyman McDonald, Coordinator of Indian Affairs, that reflected his and others' concerns regarding the large numbers of Native Americans in the correctional system and of the lack of specialized staff and programs to assist Native American inmates (Exhibits # 2, 3, 4, March 6, 1998). The Department also submitted information on Native American Statistics and Programs (Exhibit # 5, March 6, 1998). Issues regarding the Department's policies on tobacco use and

grooming policies were raised with concern for how it would affect Native American practices. The Department Tobacco Use Policy is to provide a tobacco-free environment in all its facilities and programs and provides that, "Wardens and Superintendents may approve specific exceptions designed to address legitimate offender spiritual practices." No information was offered to explain how the determination would be made of "legitimate practices." No grooming policy was instituted.

## **Department of Corrections**

### Department budget proposal to Governor and Executive Planning Process (EPP)

The Department made a presentation on May 1, 1998, to the Committee regarding the proposals that it would submit to the Governor's Office of Budget and Program Planning on May 11, 1998. The Department held a METNET conference on May 12, 1998 and public meetings across state. The final budget proposal was submitted to the Governor on September 30, 1998.

On June 19, 1998, the Department presented its preliminary budget for the 2000-2001 biennium totaling approximately \$58 million, based on the Department's most recent population plan. The Department notified the Committee that it planned to modify the population plan in the near future, based on fiscal yearend numbers and that adjustments would be made in present law and new proposals.

The Department presented a revised estimate of its fiscal years 2000-2001 budget proposals and of its population projections based on preliminary fiscal yearend 1998 data. The updated general fund request for the biennium was \$36,363,848 in present law adjustments and in new proposals, compared to \$57,514,910 presented at the June 19, 1998, meeting. The major difference from the previous total is in the reduced number of contract beds necessary for adult males; reduced external medical costs; fewer training, legal, juvenile transportation, and boot camp staff requests; and abandoning the future use of the Xanthopoulos Building at Warm Springs. These reductions were somewhat offset by increased contract beds for females and prerelease beds; increased intensive supervision (ISP) equipment; increased staff at Pine Hills Youth Correctional Facility for boys; and increased Probation and Parole staff requests.

The final proposal submitted to the Governor on September 30, 1998, totaled \$25.6 million, a \$32 million reduction from original proposals, but that equals an 18% increase over the current biennium budget. Later press releases reported a \$29.7 million budget.

### Long-Range building plans of the Department

At the August 20, 1998, meeting, the Department discussed its preliminary long-range building plans with the Committee. As the EPP process progresses, it is expected that some of the proposals will change. A Montana Women's Prison - Billings industries building will be substantially completed by November of 1998. A two-phase construction project is proposed. Phase 1 is a 48-cell facility that could expand to 96-beds (\$4.8 million). A second 48-cell unit will be proposed. On June 19, 1998, a total construction cost was estimated at \$9 million to be able to accommodate 208 women total.

Current expansion of Pine Hills Youth Correctional Facility (boys) in Miles City to a 120-bed facility, including a 24-bed sex offender facility, will be completed by August 1999, at a cost of \$10.3 million. The Department is proposing a Pine Hills Youth Correctional Facility 24-bed expansion. Riverside Youth Correctional Facility (girls) in Boulder is also building a multipurpose building that is expected to be completed by the end of 1998.

The Pine Hills Youth Correctional Facility proposal includes a secure perimeter fence, improvements to maximum security for sex offenders, window replacements in the school building, and building demolition.

A 96-cell high side (maximum) unit at Montana State Prison - Deer Lodge (MSP) that has been approved is proposed to be modified to a 96-cell reception unit with 160-bed capacity. This requires additional spending authority for federal dollars.

Also at MSP, proposals include additional staff space, Board of Pardons and Parole space to allow victims' separation from inmates for parole hearings, expansion of the armory, a new execution chamber to allow separation between inmates' and victims' families and the inmate, and water well replacement.

#### Corrections Population Projections and Management Plan

The Committee received regular reports on correctional population projections. The Committee was presented with some of the factors that affect calculating projections, such as the effect of capacity on sentencing and release decisions and the effect of publication of projections, and with supporting data on populations, admissions, and length of stay (Exhibits # 12 and 13, January 23, 1998). Up until August 1998, projections were based on fiscal yearend 1997



admissions and length of stay data. At the August 20 and 21, 1998 meeting, the Committee received projections based on preliminary fiscal year end 1998 data in the Corrections Population Management Plan, a form similar to that presented in the 1997 Legislative budget hearings. The rate of increase in admissions had decreased resulting in lower population projections for adult males, but higher projections for adult females.

The Corrections Population Management Plan presents actual fiscal yearend population for years past and projected fiscal year end populations for the upcoming biennium with an estimated institutional population distribution based on preliminary fiscal year 1998 data. In a comparison of the population projections from the January to the August Correctional Population Management Plan, the adult male population for fiscal yearend 1999 was reduced 188 persons to 2,750; for fiscal year end 2000, down 297 persons to 3,035; and for fiscal yearend 2001, down 476 persons to 3,281.

The reductions are a result of a slowing rate of increase in admissions. As a result of this reduction in the projected numbers of the adult male institutional population, the Department amended its distribution of adult males so that the Xanthopoulos Building on the Warm Springs campus will no longer be utilized and the Southwest Montana counties proposed facility will no longer be utilized. Further adjustments were also made to the population management plan, such as additional contract beds including out-of-state beds (in fiscal year 1999), the HB 83 Private Prison in Shelby, and additional prerelease center beds.

The adult female population projections on the other hand rose with a projected difference of an additional 41 women in fiscal year 1999, 56 additional women in fiscal year 2000, and 69 additional women in fiscal year 2001 for a projected total female institutional population of 323 fiscal year end 2001. This results in a proposed increased population distribution at Montana Women's Prison from 142 to approximately 205 beds by fiscal year 2003 (if the \$9.4 million long-range building proposal is approved), but the more immediate effect is in increased contracted beds, prerelease center beds, and intensive supervision next biennium.

Juvenile institutional population projections were also increased by 29 and 31 juveniles over the fiscal years 2000 and 2001, respectively, for an estimated fiscal

yearend 2001 institutional population of 327 youths. (This does not include youth in out-of-home care or residential treatment facilities.) The institutional distribution differs from the plan presented in June 19 with the Department proposing to increase Pine Hills from the currently approved 120 beds and seeking approval for an additional 24 beds to 144 beds by fiscal year 2002. The recent plan increases secure contract beds and reduces the Aspen Youth Alternatives to a constant 48 beds instead of contracting for 64 beds from fiscal year 1998 as shown in the plan presented in June. The plan also reduces the total number of transition center from the numbers presented in June (31 beds) until fiscal year 2002 when it increases to 36 beds.

The request for additional Probation and Parole Officers will be for an additional 24 officers. The current caseload is approximately 87 inmates per officer and the Department hopes to reduce it to 70 per officer to increase the quality of supervision. A natural result of increased supervision can be additional revocations to prison if the Department does not address the types of technical violations who are being revoked and returned to prison. Probation and parole violations account for approximately 50% of the admissions to prison, the bulk being probation violations (Exhibit # 7, September 12, 1998) which are under the jurisdiction of the District Court but under Department supervision. If probation violators are a part of the prison population problem, then other sanctions may need to be developed at the local level, along with the authority to use them.

A plan based on final fiscal yearend 1998 data was submitted to the Governor on September 30, 1998. The population projection did not change significantly, but there were significant differences in the distribution that had not been presented to the Committee.

- , The use of a 96-bed high side reception unit is removed from the fiscal yearend 2001 distribution and does not appear until fiscal yearend 2003.
- , The prerelease center bed distribution shows a loss of 40 beds that were rolled into the "other contract beds" category.
- , The House Bill No. 83 Private Prison Beds shows a flat 500 beds through fiscal yearend 2003, instead of progressively rising from 500 beds at fiscal yearend 2000 to 902 beds in fiscal year end 2003. The difference is also rolled into the "other contract beds" category.
- , The use of the "other contract beds" category needs further analysis because this category can mean out-of-state contract beds, additional

contracts with CCA in Shelby at the HB 83 private prison, or other potential instate contracts such as the one proposed by MERDI at one time.

The Department's intentions are unclear at this time, but the plan leaves the Department a bargaining chip to leverage the most cost-effective plan and give them a more fluid environment if population projections continue to decrease. However, this population distribution is paired with a proposal for a biennial appropriation that makes that assumption and that would require a potentially large supplemental if the assumption proves faulty. Contracting for 277 inmates takes some planning and especially if the inmates are expected to all return within the state, the Department should make clear its intentions so the Legislature has some idea of what to expect.

By the 1999 legislative session, there will be one-half of fiscal year 1999 data that may also be able to be considered that may shed some light on whether the Department's assumptions are sound. The projection methods are different for each of the populations. The methods for the smaller populations for juveniles and adult females are especially problematic statistically. The challenge will be in knowing what the projections are to a certain level of comfort, determining an appropriate funding level, and knowing how best to distribute resources.

#### Montana State Prison-Deer Lodge issues

*Expansion unit closure* - - As of March 6, 1998, 43 inmates were housed at the expansion unit on the Warm Springs campus of the Montana State Hospital. The expansion unit was previously included in the Correctional Population Management Plan with a capacity of 80 beds. As of the June 19, 1998, meeting, the Department had closed the expansion unit, and the staff was transferred to the MSP campus. Problems cited were the difficulty in finding enough inmates who were appropriate for placement and who did not have mental health or medical problems because of completion with the opening of regional and contract facilities, and staffing and security issues at the unit.

*Dr. Xanthopoulos Building (X Building)* - - As of June 19, 1998, the Department was maintaining the position that it would use the X Building on the Montana State Hospital Warm Springs campus after the new Montana State Hospital building

was completed. The X Building was to be used to house sex offenders and the chemical dependency, geriatric, and mental health populations. The cost per day was estimated at \$71 per day compared to buying services elsewhere for \$98 to \$208 per day. A portion of funds allocated for the Montana State Hospital remodel project was used for boilers for the X Building as it is still under control of and occupied by the Department of Public Health and Human Services.

The Department provided the following information in its response to the proposed findings and recommendations:

Due to the lower level of increase in the adult male inmate population and the projected operating cost of approximately \$75 per day, as well as the construction of a 500-bed private prison in Shelby which offers full sex offender programming, the Department decided that it was not economically prudent to proceed with the X Building at the present time. However, both Butte-Silver Bow and Anaconda-Deer Lodge have expressed an interest in the facility for use as a regional detention center and for the housing of state inmates. The Department is currently working with the detention board formed by the counties to further explore this option.

*New construction* - - The change for one of the two proposed 96-cell units to be expanded to a 96 cell, 160-bed high side reception unit was presented to the Committee on June 19, 1998. The Committee received information that as of August 21, 1998, no request for proposals for the first 96-cell unit had been let. In answer to an inquiry by the Committee, the Department responded at the September 12, 1998, meeting with a letter indicating that the Governor was considering a Department proposal to build a 96-cell high side reception unit first with a potential capacity of 160 beds. An estimated cost of the unit would be \$6 million, \$5.4 million of which would be funded by federal dollars from the Violent Offender Incarceration/ Truth-In-Sentencing program. Operating costs would not be included until the 2001 biennium request.

*Ranch* - - Prison ranch issues were raised before the Committee at its May 1, 1998, meeting. The contract placement of inmates out of state and in the regional correctional facility at Great Falls (with additional contract beds available in the near future) has affected the pool of inmates for selection to work at the

prison ranch. The inmates appropriate for contract placement are those with longer sentences, the same inmates that are considered for the prison ranch selection pool. Longer sentences allow for the training and experience that are important to the operation of the ranch. Inmates must also be minimum security to be placed at the ranch. Director Day stated that the Department's concern was prison capacity and risk assessment and that the market for the proper inmate is narrowing. Director Day told the Committee on June 19 that the Department will be watching this issue closely and adapting to changes. If the ranch begins to lose money, it will be time to reassess the situation. Because all inmates are under a single classification system and the Department controls placement of all inmates, the Department believes it should be able to control the situation.

*Canteen* - - The Department is in the process of letting a contract for a single vendor for the prison canteen operation (inmate ability to purchase personal care and other items such as shoes or televisions.) The Department desires a single contractor with a software capability to also deal with the inmate incentive program and to track victim restitution. Legislators expressed a concern that the contract would be with an out-of-state vendor rather than through the local Deer Lodge vendors as it is currently. The canteen is funded through a proprietary revolving fund and does not involve the general fund. No contract had been entered as of September 12, 1998.

*Cook-Chill* - - The cook-chill facility for the MSP campus was initially approved by the 1995 Legislature under the auspices of an upgrade to food service at MSP and was approved specifically with additional funding in the 1997 session. A bid for the cook-chill facility had been let by January 1998 and the facility is scheduled to be completed in October 1998. The original request for 15 full-time equivalent employees (FTE) was reduced to 12 FTE by the 1997 Legislature as the new Montana State Hospital facility would not be complete until July 1999. The cook-chill facility is planned to provide meals also to the Montana State Hospital when it is completed dependent on additional FTE and funding from the 1999 Legislature. Questions were raised by food service workers from Montana State Hospital that need to be answered about the cost-effectiveness and the accommodation of special and modified diets for the patients at Warm Springs (Exhibit # 15 and # 23, January 23, 1998).

*Mental health, dental care, and medical care* and costs - - The Department received funding for 14.25 total FTE from the 1997 Legislature to enhance medical staff to fulfill the *Langford v. Racicot* settlement agreement and to receive accreditation from the National Commission on Correctional Health Care. The total budget for health services was \$7,430,098 of which \$375,570 was for juveniles. The Department hired a medical director who was making many changes in the program, including a review on the use of psychotropic medications. Concerns were raised about all inmates being removed from psychotropic medications. The Department replied that many inmates were coming into prison on psychotropic medication and it was important to remove the inmates from the medications to determine their mental health conditions and their further need for medication. The Department has had trouble recruiting medical professionals such as registered nurses and psychiatrists. Dr. Jones is completing a pharmaceutical review and working with the contract physicians to encourage more cost-effective prescriptions (See Exhibit # 16, January 23, 1998).

#### Montana Women's Prison - - Billings (MWP) Issues

The MWP's design capacity is 46 inmates, and emergency capacity is 70 inmates. The cost per day is \$71.33 including programming and \$82.76 if administrative overhead is added. County jail holding at the Cascade County Regional Correctional Facility is \$45 per day (no programming). Director Day certified that the MWP had exceeded emergency capacity as provided in 53-30-106, MCA, that allows the Department to contract beds for women out-of-state as it has done in New Mexico (See Exhibit # 14, January 23, 1998).

#### State Youth Correctional Facilities, Transition Centers, and Parole

The *Riverside Youth Correctional Facility* opened on August 4, 1997, on the former Montana Developmental Center campus in Boulder. The capacity of the program is 16 girls (Exhibit # 1, # 2, January 22, 1998).

The *Pine Hills Youth Correctional Facility* for boys is in Miles City. Current capacity is 85 beds with an average daily population of 89. The Department is currently expanding Pine Hills to a 120-bed facility, including a 24-bed sex offender unit (Exhibits # 6, # 7, # 8, # 9, January 22, 1998). At the August 20,

1998, meeting, the Committee questioned why the Department was seeking additional FTE when in the last session, the Legislature was told that none would be needed for the expansion to 120 beds. Of the 6.45 FTE requested, 2 FTE are necessary for emergency preparedness and a third would be a staff psychologist to replace current contracted services. If an expansion to 144 beds is granted by the Legislature, it would require an additional 13 FTE.

*Aspen Youth Alternatives (AYA)* is a private, nonprofit program contracted by the Department to provide a program consisting of orientation, backcountry, residential, and aftercare phases. A group of nine youth are in each phase at \$147.90 per day and the aftercare phase is a 35-day phase at a flat fee of \$1,700. Total contract is a 170-day program costing \$21,665.50 per youth (Exhibits # 11, # 12, # 15, January 22, 1998). At the August 20, 1998, meeting, Director Day indicated that the contract is for 64 youth, including aftercare. Forty-eight youth are included in the institutional population. AYA staff provided additional information to the Committee (Exhibit # 5, August 20, 1998). Since AYA has been seen as a correctional facility, it has not been able to access federal Title IV-E (foster care) funding. The Committee recommended that DPHHS assist AYA in determining the requirements for AYA to qualify for Title IV-E funding and for the AYA to make necessary changes.

There is disagreement whether or not the AYA program is broad enough to include other foster care populations, necessary to qualify as a Title IV-E program instead of a correctional program. It appears that some of the issues involve perceptions from the correctional community or from the child welfare community that the program is more suited for a certain population. There have been reports made to the Committee that there are youth who are not being served by the child welfare community and who are not in the Youth Court juvenile justice system who could benefit from a program such as AYA offers. It is in the best interest of these youth to receive services without having to enter the Youth Court juvenile justice system.

Also, concurrently, the Mental Health Access Plan has limited the mental health services available to youth in the AYA program. This is another area in which the state could benefit by accessing additional federal Medicaid dollars for mental health services that these youth may be eligible for, as indicated by their eligibility for other medical services. Accessing additional federal dollars for mental health

services would enhance the youths' ability to address their behavior and make a new start.

In order to resolve some of these issues and to best take advantage of federal funding, the following needs to occur:

(1) The Departments of Corrections and Public Health and Human Services need to work together to resolve any contractual, statutory, or other issues to enhance the use of foster care and Medicaid ( federal funding for services to these youth), for both medical and mental health.

(2) The Department of Public Health and Human Services needs to explore their policies and professional culture and to define what is necessary, from their perspective, to incorporate greater use of the AYA program for appropriate youth in the abuse and neglect system in order to offer them the same benefits without having to enter the juvenile justice system to do so.

(3) The AYA program needs to continue to enhance its programs to serve a greater population of youth in the continuum of abuse and neglect and the juvenile justice system in unique and appropriate programs that acknowledge the different statuses and needs of the separate populations and to begin a dialogue with the greater child welfare system to discern their concerns and their reluctance to place abused and neglected youth in the AYA program.

*Transition centers* provide a transition from a secure correctional facility to parole (formerly known as aftercare) in the community. Youth may also be sentenced directly to a center. There are two transition centers for 24 juvenile males in the state, in Billings and Great Falls, each with capacity for 12 youth, usually 14 to 18 years of age (average cost per day is \$70). The Department plans to expand and site a juvenile female transition center in Great Falls (Exhibits # 1, # 6, # 7, March 6, 1998).

*Juvenile Parole Officers and transition centers* are under the administration of the Department (Exhibit # 10, January 22, 1998). *Juvenile Probation Officers* are county employees under the direction of the Youth Court in District Court. The majority of youth are under the supervision and jurisdiction of the Juvenile Probation Officers.

#### Juvenile Sex Offender Program



The Department contracted with the Brown Schools of Montana to provide sex offender treatment for male juvenile sex offenders for 19 months in the Threshold Program. The program is housed in Deer Lodge. The program is licensed for 24 beds and the Department contract is for 20 beds. Some of the youth were brought back from out-of-state facilities or other private treatment facilities. Contract cost is for \$199 per day and is from the juvenile placement budget. The Department budgeted \$1,032,000 for fiscal year 1998. An aftercare program (continuation of treatment and supervision in the community) is included in the daily rate. There is speculation that there is sufficient need that the Brown School will continue to operate for juveniles for whom a secure correctional facility is not necessary. The contract was intended to expire when the Pine Hills Youth Correctional Facility's sex offender program begins operation. The opening of that program appears to be late 1999, which would require an extension of the current contract.

#### Juvenile placement funds

The Committee received information regarding the juvenile placement funds of \$8,678,372 allocated to the Department (Exhibits # 11, # 12, # 17, January 22, 1998). This includes placement funds for out-of-home placements, the pilot projects, AYA, a life skills program, the sex offender program contract and education costs for out-of-state placements. This was an area for which the Department had to request a supplemental in the previous biennium, due in part to uncertainty about allocation of costs with the reorganization of juvenile corrections from the Department of Family Services to the Department of Corrections. The Department has been able to control the costs within the juvenile placement budget through allocation of budget amounts to each district in conjunction with the pilot project and through the hiring of five financial officers. The financial officers have been charged with working with juvenile probation officers on out-of-home placements. They also assist in accessing other funding sources that may be available such as parental contributions, private insurance, federal funds, etc.

#### Intervening in delinquency pilot projects

As provided for in Senate Bill No. 48, (Ch. 550, L.1997), the Department piloted a project in two judicial districts concerning use of juvenile placement funds. The

First (Lewis and Clark County) and the Sixteenth (Garfield, Treasure, Rosebud, Custer, Powder River, Fallon, and Carter Counties) Judicial Districts were selected by the juvenile probation officers for participation. County Commissioners in each judicial district had to agree to participate. The Judicial Districts were given more responsibility and authority for use of the juvenile placement dollars allocated to them. (Exhibit # 14, January 22, 1998).

Although there was not specific provision in law, there was a common understanding that if the judicial districts could control costs and manage placements better, then the 1999 Legislature would consider granting the remainder of the funds back to the participating judicial districts for their own local programs.

Senate Bill No. 48 required a report on the pilot project to the 56th Legislature, and the Department presented a draft report to the Committee in August (Exhibit # 6, August 20, 1998).

#### Prerelease centers and debt service reimbursement

In the past, the Department operated prerelease centers in Billings (for females) and Missoula (for males). The others were operated by private nonprofit corporations. Currently, all prerelease centers are operated by private nonprofit corporations and include Butte (male and female), Great Falls (male and female), Billings (male and female), and Missoula (males). Because of Missoula's short-term experience as a nonprofit corporation, since June 1994, and the correctional nature of the program, private sector funding has been difficult. The 1997 Legislature passed House Bill No. 136 (Ch. 477) to allow the Health Facility Authority to assist funding for new or expanded facilities. Both Billings and Missoula have participated. In the future, the Department will be including debt service reimbursement in the per diem contracted cost of the Missoula Prerelease Center and possibly others. The Committee supported the Department's policy to include debt service in its per diem rate at its January 23, 1998 meeting (See Exhibits # 18, # 19, # 20, January 23, 1998).

#### Chemical dependency treatment in alternative correctional facilities/programs

The Department piloted a project with the Community, Counseling, and Correctional Services, Inc., which operates Connections Corrections at the Butte Prerelease Center. The program provides intensive outpatient chemical dependency treatment in a secure correctional environment for 30 offenders. Most are fourth DUI convictions. Concerns were raised regarding licensure of the facility as a "chemical dependency treatment facility" (Exhibits # 6, October 3, 1997). Clarifications regarding the program were made to ensure that it is in fact a correctional program that offers treatment in an intensive outpatient model where treatment is performed by state-certified chemical dependency counselors. Since it was a pilot project, the Department funded the placements through the funds for contract placements. The Department plans to pursue specific funding for 30 beds from the 1999 Legislature. The Private Prisons Subcommittee expressed an interest in expanding the program to an additional prerelease center. Expansion would free up either prison beds or prerelease center beds that are now being filled with 4th DUI inmates. Some of these inmates may receive treatment in a more timely manner and be able to be placed in a community within the confines of and with the restrictions of a prerelease program.

#### Department information systems and technology

In the 1997 legislative session, the Department received \$1.9 million in House Bill No. 188 and \$830,000 in House Bill No. 2 (the appropriations bill) to improve capabilities of the Adult Correctional Information System (ACIS) and for network staff. ACIS is a tracking system for adult offenders and was not designed for research or program analysis. Following a legislative audit of the system, the Department has begun implementing various strategies to address automation concerns (Exhibit # 4, May 1, 1998 - Automation projects summary update).

The ACIS has had some significant issues raised by the Legislative Finance Committee, Legislative Audit Division, the Joint Oversight Committee on State Management Systems, and the Correctional Standards and Oversight Committee. Committee staff prepared a report entitled "Legislative Oversight on Correctional Data: An Overview of ACIS and a Request for a Progress Report", which outlines the concerns.

The Department's information management system and the information systems of the State Court Administrator's office, the Department of Justice criminal history record system and criminal justice information services project, and the Child and Adult Protective Services (CAPS) system are each dealing with numerous data fields of the same information, and integration is vital. Preliminary steps toward integration have been taken, but whether full participation and integration will occur has yet to be seen. The 1999 Legislature should pay special attention to the analysis of the extent to which automation projects have been completed and integrated with the Department of Justice, State Court Administrator for adult criminal justice system information, and with the Department of Public Health and Human Services (DPHHS) for juvenile information. The current development of these various computer systems is an optimum time to coordinate efforts. Commitment to sharing data and creating systems of high integrity and quality towards common goals needs to be demonstrated by decisionmakers, technical personnel, and program personnel in each agency.

The Department responded to these statements that had been proposed in the form of unadopted recommendations following the final Committee meeting stating, "The Department supports this recommendation and has been working with the agencies mentioned above during development of its new information system to ensure that these provisions are met, pursuant to U.S. Attorney General's National Task Force on Court Automation and Integration."

Information management systems have not traditionally been developed with the intent to be capable of producing information and data for program evaluation and policy analysis, and the issue still needs to be addressed. One issue raised is that the various agencies need input from the Legislature on which measures to evaluate and what are acceptable definitions. The goals of program evaluation and policy analysis should be included and incorporated into any future planning of data systems that deal with criminal justice and corrections purposes.

A juvenile corrections information system has been incorporated into the CAPS system of DPHHS. The CAPS system was originally designed for out-of-home placement provider tracking and reimbursement and has been modified to include information that had formerly been captured for the Juvenile Probation Information System (JPIS) of the Montana Board of Crime Control for federal reporting

purposes. The Department participates in CAPS as it controls juvenile placement funds for out-of-home placement of youth in the juvenile corrections system. Integration with other Department systems is planned to integrate information on juveniles in secure placement, such as Pine Hills or Riverside Youth Correctional Facilities.

#### Prison riot trial

Following the September 22, 1991, prison riot at MSP, 13 lawsuits were filed by inmates who were assaulted or on behalf of inmates who were killed. In 1995, District Court Judge Ted Mizner ruled that state negligence contributed to the riot. The recent trial's purpose was to determine damages.

The Committee received an update at the March 6, 1998, meeting in Great Falls on the trial, which began March 2. The jury found for the inmates on the issues of full restraint that prison staff initiated to retain control and order and on body cavity searches conducted on inmates before they were put back in the restored maximum security facility. The jury determined that there was no physical abuse of inmates during the reassertion of control, no conspiracy, no coverup, no wrongful destruction of inmate legal papers, and no denial of medical care. The settlement awarded to 36 inmates was approximately \$10,850. Attorney fees and court costs were still at issue. A settlement conference was scheduled for May 29. The Committee voted to send a letter, on behalf of taxpayers, objecting to inmates' attorneys applying for exorbitant and unwarranted attorney fees (Exhibit # 1, June 19, 1998).

At the end of July, the state settled by agreeing to pay 10 remaining plaintiffs \$600,000, which includes \$370,000 to inmates or inmates' families and \$230,000 to inmates' attorneys. The attorneys were appointed by the court to represent the inmates and had not received compensation for their work throughout the preparation and trial. It is the court's responsibility to determine fair compensation and award of court costs. Any settlement would come from the Tort Claims Division of the Department of Administration.

#### Task Force for the effective management of sex offenders

The Department of Corrections sponsored a Task Force on the Effective Treatment of Sex Offenders, and numerous proposals were brought forth on June 19 as a result of these efforts. The proposals included (August 20 changes in parentheses):

1. sex offender unit at X Building (no longer possible);
2. ABEL screening assessment (included August 20) and case manager (unclear status);
3. prerelease center beds for 10 sex offenders (reduced from 20, included \$75,000 for increased cost per day of \$20 for additional supervision);
4. probation and parole officer targeted caseloads (rolled into total P&P numbers);
5. sex offender transition and treatment costs.

The Committee had considered these proposals in their findings and recommendations, but because the status of some of the proposals was unclear, the Committee did not adopt a recommendation for this area, although the Private Prisons and Programs Subcommittee had been tracking the progress and was encouraged by their efforts. The Department responded to the proposed recommendation following the final meeting stating:

Due to the lower level of increase in the adult male inmate population and the projected operating cost of approximately \$75 per day, as well as the construction of a 500-bed private prison in Shelby which offers full sex offender programming, the Department decided that it was not economically prudent to proceed with the X Building at the present time. ...It is hoped that the Oversight committee will support issues 2 through 5 as they move through the upcoming session, as these proposals represent a concentrated effort directed towards a large segment of the offender population.

## CHAPTER 4

### RESOURCES

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#### Staff Reports

Foust, Luke. "Report on of the Revision of Title 46, Chapter 18, MCA" August 1998.

Fox, Susan Byorth and Valencia Lane. "Correctional Standards and Limitations on Confinement" June 1998

Fox, Susan Byorth. "Report of the Advisory Committee on Juvenile Detention Standards and Administrative Rules" June 1998.

Fox, Susan Byorth. "Policies on Good Time and of the Effects on Sentencing Practices: History and Survey Results" May 1998.

Fox, Susan Byorth. "Legislative Oversight on Correctional Data: An Overview of ACIS and a Request for a Progress Report" April 1998.

Fox, Susan Byorth. "Cost Comparisons Between State and Private Correctional Facilities: Apples to Apples?" February 1998.

Fox, Susan Byorth. "House Joint Resolution No. 19: Proposed Study Plan" June 1997.

Fox, Susan Byorth. "Corrections Standards and Oversight Committee: Proposed Study Outline" June 1997.

Higgins, Gordon. "Comparison of Regional Corrections Agencies" April 1998.

Higgins, Gordon. "Seeking Middle Ground: Can Policymakers Find an Answer to the Spiraling Costs of Corrections?" April 1998.

## **Correctional Standards Materials in the Legislative Branch Library**

American Correctional Association. Standards Manuals: v. 1 Adult Correctional Boot Camp Programs (1995); v. 2 Juvenile Community Residential Facilities (1994); v. 3 Juvenile Training Schools (1991); v. 4 Small Jail Facilities (1989); v.5 Small Juvenile Detention Facilities (1991); v. 6 Adult Correctional Institutions (1990); v. 7 Adult Community Residential Services (1995); v. 8 Adult Local Detention Facilities (1991); v. 9 Adult Parole Authorities (1980 Book); v. 10 Adult Probation and Parole Field Services (1981); v. 11 Electronic Monitoring Programs (1995) -- Lanham, MD: American Correctional Association

American Correctional Association. 1998 Standards Supplement Lanham, MD: American Correctional Association, 1998. (Book)

American Correctional Association. Best Practices: Excellence in Corrections Lanham, MD: American Correctional Association, 1998. (Book)

Keve, Paul W. Measuring Excellence: The History of Correctional Standards and Accreditation Lanham, MD: American Correctional Association, 1995.

National Commission on Correctional Health Care. Standards for Health Services in Jails Chicago, IL: NCCHC, 1996.

National Commission on Correctional Health Care. Standards for Health Services in Prisons Chicago, IL: NCCHC, 1996.

## **Related Legislative Audit Division Staff Reports**

### Memos

Potential Legislative Audit Division Performance Audit Work in Corrections Area, June 23, 1997 (Exhibit # 18, June 27, 1997)

### Audits

Adult Correctional Information System, Department of Corrections. EDP Audit, July 1997.



Department of Corrections (Intensive Supervision Program and Prerelease Center Program). Performance Audit, September 1998 Job # 98P-05 . (Attachment # 3, Exhibit # 1, September 12, 1998).

Adult Probation and Parole Process, Department of Corrections. Performance Audit, March 1996, Job # 95P-01.

### Legislative Requests

Prison Privatization Analysis, August 21, 1996, Job # 96L-47.

Work Dormitory Classification Plan (MSP), February 10, 1997 (Exhibit # 15, July 25, 1997)

Montana State Prison Inmate Classification Process, February 19, 1997, Jobs # 97SP-55 and 97L-78 (Exhibit # 16, July 25, 1997).

Montana State Prison Inmate Per Diem Rates, October 1, 1997, Job # 98L-13.

Review of Department of Corrections Request for Proposals for Private Prison Development and Operations, December 17, 1997 (Exhibit # 22, January 23, 1998).

Department of Corrections Institutional Population Projection Methodology Review, Job # 97SP-55, January 30, 1996.

Update on Prison Population Projection Methodology, September 4 and 25, 1998, Job # 99L-398.

Status of Montana State Prison Cook-Chill Facility, September 30, 1998, Job # 99L-365.

### Mandatory Statutory Reviews

Summary of DOC Contract with CCA to Build and Operate a Prison Facility in Shelby, Montana, June 25, 1998 and August 19, 1998, Job #SP-55. (Exhibit # 20, August 20, 1998).

Review of Department of Corrections Prerelease Center Contracts, (Missoula) June 23, 1998 Memorandum. (Exhibit # 19, August 20, 1998) and (Great Falls) October, 1998, Job # 98SP-80.

### **Related Department of Corrections Documents Submitted to Committee**

"Corrections Standards and Oversight Committee Historical Information handbook", Exhibit # 1, June 27, 1997

Corrections Population Management Plan -

April 24, 1997 version (Exhibit # 6, June 27, 1997)

Adult male population projections, October 1, 1997 (Exhibit # 12, October 3, 1997)

Female institutional population projections (Exhibit # 19), female institutional population distribution (Exhibit # 20) female prison demographics (exhibit # 21), November 7, 1998

January 22, 1998 version (Exhibit # 5, January 22, 1998)

August 19, 1998 version (Exhibit # 2, 3, 4, August 20, 1998)

Contracts with regional correctional facilities and out-of state: Missoula County (Exhibit # 17), Dawson County (Exhibit #18), Cascade County (Exhibit # 19), Dickens County, Texas (Exhibit # 20), July 25, 1997.

DOC Statistics, Time Line and ARM Rules for HB 83: Exhibits # 7 - 12, June 27, 1997

MSP Transfer Criteria (# 9), Programming History/Dickens County correctional Facility (# 10), DOC Conditions of Probation and Parole (# 11), Local Pre-release Center Screening Results (# 12), CTC (Boot camp) transition Plan (# 14),

Community Corrections Division Juvenile Update (Exhibit # 31, July 25, 1997)

Classification at MSP (Exhibit # 1), Minimum Standards for Custody Levels (Exhibit # 2), Objective Custody Classification System (Exhibit # 3, October 2, 1997)

West Tennessee Detention facility Social Services Program (Exhibit # 2), CCA Inmate Orientation to West Tennessee detention facility (Exhibit # 3, October 3, 1997).

Out-of-State Housing Contract, Dickens County, Texas, Compendium of Contract Audit Activity through 8/2/97. (Exhibit # 7), October 3, 1997

Re: MERDI presentation. Adult male population projections (Exhibit # 12) , pros and cons (Exhibit # 13), desire to proceed with contract, letter of intent language (Exhibit # 14) October 3, 1997

Rules for siting and construction standards of private correctional facilities in Montana and timetable (Exhibit # 19, # 20 October 3, 1997)

1/27/97 Stipulated agreement between DOC and DOJ, ACLU on inmate protection from harm and risk of harm and fire safety at MSP (Exhibit # 5), on medical, dental, and mental health care (Exhibit # 6), and Settlement Agreement regarding conditions at MSP (Exhibit # 7), November 7, 1997

Montana Women's Prison offender handbook (Exhibit # 17, November 7, 1997)

Aspen Youth Alternatives contract with DOC (Exhibit # 13, January 22, 1998)

Request for Proposals for 500 Bed Private Prison Development and Operations (Exhibit # 1, January 23, 1998) respondents (Exhibit # 2, January 23, 1998)

DOC Native American Statistics and Programs (Exhibits # 2, 3, 4, 5, March 6, 1998)

Department of Corrections Automation Projects, summary update, May 1, 1998 (Exhibit # 4, May 1, 1998). FY1995 EDP Audit projected Implementation dates (Exhibit # 5) Department of Justice Criminal Justice Information Services Project, (Exhibit # 6)

Montana Jail Inspection Program Narrative (Exhibit # 9, May 1, 1998) and Revised Mandatory Standards (Exhibit #10, May 1, 1998)

1998-99 Expenditures: Total All Appropriated Funds (Exhibit # 2), Adult Correctional Population (ADP) (Exhibit # 3), RFP Scoring Sheet as of June 4, 1998 (Exhibit # 4, Executive Summary of Private Prison Selection Process and Recommendation, RFP # PP 500-097 (Exhibit # 5), FY2000-01 Biennium EPP Request General Fund (Exhibit # 6), Adult Opinions in Lewis and Clark County about Establishing a Prerelease Center (Exhibit # 7), Task Force for the Effective Management of Sex Offenders Executive Planning Proposals (Exhibit # 8, June 19, 1998)

Public Safety Partnership (charts and statistics) (Exhibit # 1, 1998)

Intervening in Delinquency Pilot Project as indicated in SB 46 [sic], Section 73. (Exhibit # 6, August 20, 1998)

Capital Projects Status Recap (Exhibit # 7, August 20, 1998)

Proposed legislation (Exhibits # 8 through 17, August 20, 1998)

Probation and Parole - Revocations July 1, 1997 to June 30, 1998 (Exhibit # 7, September 12, 1998)

### **Related Board of Pardons and Parole Materials Submitted to Committee**

Report of of the Montana Board of Pardons and Parole (October 1996) (Exhibit # 4), 1997 Statistical Data (Exhibit # 5) October 3, 1997.

Parole Board Data for Calendar Years 1976 Through 1996 (Exhibit #1, information on good time laws and what they mean (Exhibit # 2) a 1997 profile of offenders denied parole annually or biennially (Exhibit # 3) and a 1997 profile of offenders denied parole - pass to discharge (Exhibit # 4), November 7, 1997

Board of Pardons and Parole, Topics for Discussion, July 27, 1998 (Exhibit # 6, August 21, 1998)

### **OBPP Reports**

LaFond, Mary. Prerelease Centers Alternatives to Incarceration. August, 1998.  
Office of Budget and Program Planning

### **Other Related Materials**

Cascade County Programs (Exhibits # 15 through # 20, March 6, 1998)

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## **APPENDICES**

## **DRAFTS OF RECOMMENDED LEGISLATION**